

No. 12736

File 7

United States
Court of Appeals
for the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

GLOBE WIRELESS, LTD.,

Respondent.

Transcript of Record

Petition for Enforcement of an Order of the
National Labor Relations Board.

FILED

MAY 29 1951

PAUL A. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES

NATHAN R. BERKE,
821 Market St.,
San Francisco, Calif.,

Appearing on Behalf of General Counsel,
National Labor Relations Board.

BROBECK, PHLEGER & HARRISON, by
RICHARD ERNST,
111 Sutter St.,
San Francisco, Calif.,

Appearing on Behalf of Globe Wireless,
Ltd., The Respondent.

GLADSTEIN, ANDERSEN, RESNER & SAW-
YER, by

ALLAN BROTSKY,
240 Montgomery St.,
San Francisco, Calif.,

Appearing on Behalf of Lorraine E. Con-
ger, et al., the Charging Party.

NLRB 501

(10-20-47)

United States of America
National Labor Relations Board

ADDITIONAL CHARGE 13
AGAINST EMPLOYER

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Globe Wireless, Ltd., at 141 Battery Street, San Francisco, Calif., employing approx. 30 workers in wireless communications has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and (3) of said Act, in that:
2. On or about January 21, 1949, said employer discharged the undersigned solely by virtue of the membership and activities of the undersigned in the American Communications Association, a labor organization.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. (Paragraphs 3, 4 and 5 apply only if the charge is filed by a labor organization.) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9(f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number The financial

data filed with the secretary of Labor is for the fiscal year ending A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

4. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.
5. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g) and (h) of the Act.
6. (Full name of labor organization, including local name and number, or person filing charge): Chas. A. Jones. (Address): 204 Park Street, Redwood City, Calif.
7. (Full name of national or international labor organization of which it is an affiliate or constituent unit): (address):

(By /s/ CHAS. A. JONES,

(Signature of representative
or person filing charge.)

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

240 Montgomery St., S. F. 4,
Attorneys for
Chas. A. Jones.

Subscribed and sworn to before me this 7th day of February, 1949, at San Francisco, as true to the best of deponent's knowledge, information and belief.

/s/ AGNES QUARE,

Notary Public in and for the City and County of
San Francisco, State of California.

Do Not Write in This Space

Case No. 20-CA-193

Additional Charge 13

Date filed: 2/16/49.

9(f), (g), (h) cleared

Form NLRB-501

(12-48)

United States of America

National Labor Relations Board

AMENDED CHARGE AGAINST EMPLOYER

Important—Read Carefully

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

1. Employer against whom charge is brought: Globe Wireless, Ltd.

Address of Establishment: 141 Battery St., San Francisco, Calif.

No. of workers employed: Approximately 30.

Nature of employer's business: Wireless communications.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a) subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc. If more space is required, attach additional sheets): On or about January 22, 1949, said employer discharged the undersigned solely because of the latter's participation or alleged participation in concerted activity of a group of employees of the employer protesting the discriminatory discharge of Charles Jones, an employee of said employer.
3. Full name of labor organization, including local name and number, or person filing charge: Lorraine E. Conger.

4. Address: 1941 Taraval St., San Francisco, Calif.
5. Full name of national or international labor organization of which it is an affiliate or constituent unit. (To be filled in when charge is filed by a labor organization).
6. Address of national or international, if any:
7. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By LORRAINE E. CONGER,
(Signature of representative
or person filing charge.)

GLADSTEIN, ANDERSEN,
RESNER & SAWYER,
240 Montgomery St., San
Francisco, Calif.,
Attorneys for Lorraine E.
Conger.

April 1, 1949.

Wilfully false statements on this charge can be punished by fine and imprisonment (U. S. Code, Title 18, Section 80).

Do not write in this space.

Case No.: 20-CA-193. (Additional Charge.)

Date filed: April 5, 1949.

Compliance status checked by:

“The foregoing charge is, *mutatis mutandis*, identical with the charges filed with the Board on April

5, 1949, by Paul J. Guerrero, Violet A. Leach, Jesse E. McLin, Homer E. Mulligan, M. C. Parks, John Gyuresik, and Leslie T. Wheeler, and with the charges filed with the Board on April 4, 1949, by Lillie I. Friend, Albert E. Hinde, Virginia Kelso, R. W. Niemi, Louis Pena, Sylvia Pottle, Bruce Risley, George J. Rosengren, David E. Sheaffer, Pauline G. Smith, and Viola M. Williams."

United States of America

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-193

In the Matter of

GLOBE WIRELESS LTD.

and

LORRAINE E. CONGER, LILLIE I. FRIEND,
PAUL GUERRERO, JOHN GYURCSIK,
ALBERT E. HINDE, CHARLES A. JONES,
VIRGINIA KELSO, VIOLET A. LEACH,
JESSE E. McLIN, HOMER E. MULLIGAN,
RUDOLPH W. NIEMI, MALCOLM G.
PARKS, LOUIS PENA, SYLVIA POTTLE,
BRUCE B. RISLEY, GEORGE J. ROSEN-
GREN, DAVID E. SHEAFFER, PAULINE
SMITH, LESLIE T. WHEELER, VIOLA H.
WILLIAMS.

Individuals.

COMPLAINT

It having been charged by the individuals listed in the caption above that Globe Wireless Lt., 141 Battery Street, San Francisco, California, has engaged in and is now engaging in certain of the unfair labor practices affecting commerce, as set forth in the National Labor Relations Act, 29 U.S.C.A. 141 et seq. (Supp. July, 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the Regional Director for the Twentieth Region, designated by the Rules and Regulations of the National Labor Relations Board—Series 5, as amended, Section 203.15, hereby issues this Complaint and alleges:

I.

Globe Wireless Ltd., hereinafter called the respondent, is a Nevada corporation engaged in the transmission of international radio communications between the United States, including the Territory of Hawaii, and other countries. Its principal office is located in San Francisco, California, and it maintains branch offices in New York City; Honolulu, T. H.; Seattle, Washington; Los Angeles, California; Washington, D. C., and Shanghai, China. During 1948 the respondent purchased communications equipment valued at approximately \$50,000. About fifty per cent of such equipment was shipped into the state where used from other states of the United States. During the same year, the respondent received revenue in excess of \$250,000 for its serv-

ices in transmitting messages to and from continental United States and other parts of the world.

II.

American Communications Association, affiliated with the Congress of Industrial Organizations, hereinafter called the ACA, is a labor organization within the meaning of Section 2(5) of the Act.

III.

At various times between August, 1948, and January, 1949, inclusive, the respondent, by its officers and agents, while engaged in the operation of its business described above, threatened its employees with discharge or demotion as a penalty for activity by them on behalf of the ACA.

IV.

The respondent, by its officers and agents, while engaged in the operation of its business described above, discharged Charles A. Jones on or about January 21, 1949, and has at all times since refused to reinstate him because of his membership in and activities on behalf of the ACA.

V.

The respondent, by its officers and agents, while engaged in the operation of its business described above, discharged its employees listed below on or about the dates shown, and has at all times since refused to reinstate them because they engaged in concerted activities for the purposes of collective bargaining, mutual aid and protection.

Albert E. Hinde	January 21, 1949
Rudolph W. Niemi	January 21, 1949
Malcolm G. Parks.....	January 21, 1949
Sylvia Pottle.....	January 21, 1949
Bruce B. Risley.....	January 21, 1949
Pauline Smith.....	January 21, 1949
Viola H. Williams.....	January 21, 1949
Lorraine E. Conger.....	January 22, 1949
John Gyuresik.....	January 22, 1949
Virginia Kelso.....	January 22, 1949
Violet A. Leach.....	January 22, 1949
Jesse E. McLin.....	January 22, 1949
Homer E. Mulligan.....	January 22, 1949
Louis Pena.....	January 22, 1949
George J. Rosengren.....	January 22, 1949
David E. Sheaffer.....	January 22, 1949
Lillie I. Friend.....	January 24, 1949
Paul Guerrero.....	January 24, 1949
Leslie T. Wheeler.....	January 24, 1949

VI.

The respondent discharged and refused to reinstate its employees, as set forth in Paragraph V, above, for the additional reason that they were members of and were engaged in activities on behalf of the ACA.

VII.

By its acts set forth in Paragraphs IV and VI, above, the respondent discriminated and is discriminating, in regard to the hire and tenure of employment and terms and conditions of employment of the employees referred to therein, thereby discouraging membership in the ACA, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

VIII.

By its acts set forth in Paragraphs III, IV, V, VI and VII, above, and by other similar acts and conduct, the respondent interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and did thereby engage in, and is thereby engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

IX.

The acts of the respondent set forth in Paragraphs III, IV, V and VI, above, occurring in connection with operations of the respondent described in Paragraph I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on this 3rd day of June, 1949, issues this Complaint against Globe Wireless Ltd., 141 Battery Street, San Francisco, California, the respondent herein.

[Seal] /s/ ROY O. HOFFMAN,

Acting Regional Director, 20th Region, National Labor Relations Board.

[Title of Board and Cause.]

ANSWER

Comes now Globe Wireless, Ltd. and answers the Complaint filed by the National Labor Relations Board as follows:

First Defense

I.

Globe Wireless, Ltd. admits the allegations of Paragraph I of the Complaint.

II.

Globe Wireless, Ltd. alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs II and IX of the Complaint and on this ground denies generally and specifically, each and all of the allegations of said Paragraphs II and IX.

III.

Globe Wireless, Ltd. denies the allegations of Paragraphs III, VI, VII and VIII of the Complaint.

IV.

Answering the allegations of Paragraph IV of the Complaint, respondent alleges that on January 20, 1949, Charles A. Jones was advised that his work on a new work assignment, which was given him upon his successfully bidding therefor and which required the use of recently installed machines, was not satisfactory in the amount of work completed during a work period and that he was being offered an assignment with a minimum work load and was being directed and instructed to practice on said machines during any work lulls within his working hours so that he could improve his operation of such machines sufficiently to enable him to complete a satisfactory amount of work during a work period. Said Charles A. Jones thereupon was guilty of gross insubordination in that, among other things, (a) he utterly, completely and unconditionally refused to do the work assigned him and stated to his supervisor that he so refused, (b) he utterly, completely and unconditionally refused to improve or increase the amount of work he was completing or to take any action directed to such end and stated to his supervisor that he so refused, and (c) he utterly, completely and unconditionally refused to practice on such machines or to take any other action that might contribute to the

improvement of his operation of such machines and stated to his supervisor that he so refused. Said acts and statements of insubordination were repeated and fully confirmed by him on January 21, 1949, and he was thereupon discharged for insubordination. Respondent alleges that said Charles A. Jones was discharged solely because of insubordination. Said Charles A. Jones was subsequently replaced by a new permanent employee. Respondent alleges that, until the time of said replacement, respondent refused to reinstate said Charles A. Jones solely because of insubordination and that, since the time of said replacement, respondent has refused to reemploy said Charles A. Jones because of said replacement and because of said insubordination, and has refused to employ said Charles A. Jones for no other reason than said replacement and said insubordination. Respondent denies that it discharged or refused to reinstate Charles A. Jones because of his membership in American Communications Association or because of his activities on behalf of American Communications Association or any labor organization, or because of any such activities. Respondent denies generally and specifically, each and all of the allegations of said Paragraph IV of the Complaint that are not specifically admitted or denied in this Paragraph.

V.

Answering the allegations of paragraph V of the Complaint, respondent alleges:

(a) On or about the respective dates stated

after the names of the persons listed below, each of the said persons left his work and refused to perform his work and has, ever since that time, continuously refused to work.

Albert E. Hinde.....	January 21, 1949
Rudolph W. Niemi.....	January 21, 1949
Malcolm G. Parks.....	January 21, 1949
Sylvia Pottle.....	January 21, 1949
Bruce B. Risley.....	January 21, 1949
Pauline Smith.....	January 21, 1949
Viola H. Williams.....	January 21, 1949
Lorraine E. Conger.....	January 22, 1949
John Gyuresik.....	January 22, 1949
Virginia Kelso.....	January 22, 1949
Violet A. Leach.....	January 22, 1949
Jesse E. McLin.....	January 22, 1949
Homer E. Mulligan.....	January 22, 1949
Louis Pena.....	January 22, 1949
George J. Rosengren.....	January 22, 1949
Davied E. Sheaffer.....	January 22, 1949

(b) On or about January 23, 1949, Paul Guerero failed to report for work as scheduled and failed at any time to initiate any advice to respondent of such failure or the reason therefor and, upon his next appearance at his place of work on or about

January 24, 1949, failed and refused and was unable to give any adequate reason for such failures. His supervisor thereupon advised him that he was discharged. On January 24, 1949, respondent notified said Paul Guerrero that the District Manager of the company wanted to review this action and to return him to work if there was not sufficient cause for discharge, and instructed him to call the District Manager to arrange a mutually agreeable time for such review. Said Paul Guerrero failed and refused to meet with respondent's District Manager and failed and refused to report to the office of respondent or to work or to give any reason for his failure to work on January 23, 1949, and has ever since continued in said refusals and failures.

(c) At or about 12:01 a.m., January 24, 1949, Leslie T. Wheeler failed to report to work as scheduled and failed at any time to advise respondent of such failure or the reason therefor and when he next appeared at his place of work at approximately 8:00 a.m. on January 24, 1949, he failed and refused and was unable to give any adequate and substantiated reason for such failures, or any reason. His supervisor thereupon advised him that he was discharged. On January 24, 1949, respondent notified said Leslie T. Wheeler that the District Manager of the company wanted to review this action and to return him to work if there was not sufficient cause for discharge, and instructed him to call the District Manager to arrange a mutually agreeable time for such review. Said Leslie T. Wheeler failed and refused to meet with respondent's District

Manager and failed and refused to report to the office of respondent or to work or to give any reason for his failure to work on January 23, 1949, and has ever since continued in said refusals and failures.

(d) At or about 8:00 a.m., January 24, 1949, Lillie I. Friend reported at her place of work as scheduled and was told that her job was open and was instructed and directed to go to work. She thereupon failed and refused to go to work and left her place of employment and continuously since then has failed and refused to work or to report to work.

(e) Each of said persons named in subparagraphs (a), (b), (c) and (d) of this paragraph V was replaced by a new permanent employee during the continuance of his active refusal to work.

(f) Respondent denies generally and specifically, each and all the allegations of said paragraph V of the Complaint that are not specifically admitted or denied in this paragraph V.

Second Defense

VI.

Respondent discharged Charles A. Jones for cause within the meaning of Section 10(c) of the Act.

Third Defense

VII.

Each of the persons named in subparagraphs (a) and (d) of paragraph V hereof, while he was scheduled for work and present at his place of work, was

offered his work and was instructed and directed to do his scheduled work and thereupon failed and refused to do so and, while such failure and refusal continued, was replaced by a new permanent employee.

Fourth Defense

VIII.

Each of the persons named in subparagraph (a) of paragraph V hereof left his work during the course of his tour of duty and while the radio telegraphic circuit he was employed to operate was open and carrying traffic and offering service to the public in accordance with Respondent's certificate of convenience and necessity under the Federal Communications Act and with the knowledge and intent that such action would prevent Respondent from operating said circuit for radio telegraphic communication until it could find a replacement for him and that the public would thereby be deprived of any communication service through such facility of Respondent until Respondent was able to obtain such replacement. Each of said persons thereby intended to coerce, compel and force Respondent to violate the Federal Communications Act, and did so, and each of the said persons did thereby violate said Act.

Fifth Defense

IX.

Each of the persons named in subparagraph (a) of Paragraph V hereof deserted his work and, upon being instructed to turn to his scheduled work, re-

fused to perform his work in violation of the terms and conditions of the contract of employment under which such person was actually performing work at the time of his desertion of his work.

Sixth Defense

X.

Upon information and belief Respondent alleges that American Communications Association made and filed each and all of the charges upon which the complaint is based.

XI.

Upon information and belief Respondent alleges that said American Communications Association has not complied with the provisions of subsections (f), (g) and (h) of Section 9 of the Act.

Seventh Defense

XII

Paragraph X of the Sixth Defense is incorporated herein by reference as though set forth in full.

XIII.

Upon information and belief Respondent alleges that any and all concerted activities for the purposes of collective bargaining, mutual aid and protection, or for any other purpose, engaged in by the persons named in Paragraph V of the Complaint while employees of Respondent were and are activities of, for and on behalf of said American Communications Association. Said concerted activities, and any and all concerted activities of said American Communi-

ications Association, and the practices of said American Communications Association, its officers and its members, had the intent and the necessary effect of burdening or obstructing commerce and impairing the interest of the public in the free flow of interstate commerce in radio telegraphic communication.

XIV.

Respondent alleges that the acts of said American Communications Association, its officers, agents and its members, including those carried on by the persons listed in Paragraph V of the Complaint, have a close intimate and substantial relief to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce in violation of the policies of the National Labor Relations Act.

XV.

Upon information and belief respondent alleges that said American Communications Association, its officers and agents and members, including those whose names are listed in paragraph V of the complaint, have by their acts restrained and coerced those employees of Globe Wireless who have chosen not to become members of said American Communications Association, in their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or

other material aid or protection and in their right to refrain from any or all of such activities.

XVI.

Respondent alleges that said American Communications Association, its officers and agents and members, including those whose names are listed in paragraph V of the complaint, have attempted to cause respondent to discriminate against those employees who have chosen not to belong to said American Communications Association in regard to hire or tenure of employment and other terms and conditions of employment.

XVII.

Respondent alleges that said American Communications Association, its officers and agents and members, including those whose names are listed in paragraph V of the complaint, have induced or encouraged the employees of other employers to refuse in the course of their employment to handle messages that were or were destined to be handled by respondent or to perform services with respect to messages that were or were destined to be handled by respondent, with the object of forcing or requiring other employers to cease handling such messages and to cease doing business with respondent in accordance with established practices for the joint handling of messages between points served by respondent and points not served by respondent.

Eighth Defense

XVIII.

No relief can be granted to effectuate the policies of the Act on the basis of the complaint.

Ninth Defense

XIX.

Any relief based upon the complaint will contravene the policies of the Act.

Wherefore, the complaint should be dismissed and the proceedings terminated without any order directed against the Respondent.

Dated: July 2, 1949.

BROBECK, PHLEGER &
HARRISON,

/s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

Attorneys for Respondent
Globe Wireless, Ltd.

State of California,

City and County of San Francisco—ss.

Neil D. Brown, being first duly sworn, deposes and says:

That he is an officer, to wit, Vice President of Globe Wireless, Ltd., a corporation, the Respondent named in the foregoing Answer and, as such is authorized to verify said Answer; that he has read the said Answer and knows the contents thereof, and that the same is true of his own knowledge

except as to matters which are therein stated upon information and belief, and as to such matters that he believes it to be true.

/s/ NEIL D. BROWN.

Subscribed and sworn to before me this 2nd day of July, 1949.

[Seal] /s/ EUGENE P. JONES,
Notary Public in and for the City and County of
San Francisco, State of California.

Received July 5, 1949, NLRB.

[Title of Board and Cause.]

INTERMEDIATE REPORT

Upon amended charges filed on April 1, 1949, by the individuals named in the caption hereof, herein called the charging parties, the General Counsel of the National Labor Relations Board, herein called respectively the General Counsel¹ and the Board, by the Regional Director for the Twentieth Region (San Francisco, California) issued a complaint dated June 3, 1949, against Globe Wireless, Ltd., herein called Respondent, alleging that Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Sections 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act.

¹This term includes particularly counsel appearing at the hearing on behalf of the General Counsel.

Copies of the complaint, accompanied by a notice of hearing, were duly served upon Respondent and the charging parties.

With respect to the alleged unfair labor practices the complaint alleged, in substance, that Respondent: (1) at various times between August 1948 and January 1949, threatened its employees with discharge or demotion as a penalty for their activity on behalf of American Communications Association, herein called the A.C.A., affiliated with the Congress of Industrial Organizations; (2) on or about January 21, 1949, discharged one Charles Jones because of his membership in and activities on behalf of A.C.A., and (3) from January 21 to 24, 1949, discharged the 19 other employees named in the caption hereof because they engaged in concerted activities for the purposes of collective bargaining and mutual aid and protection.

On July 5, 1949, Respondent filed an answer admitting certain allegations of the complaint with respect to the nature of its business, but denying that it had engaged in any unfair labor practices.

Pursuant to notice a hearing was held at San Francisco, California, from July 26 to 30, 1949, before Horace A. Ruckel, the undersigned Trial Examiner duly appointed by the Chief Trial Examiner. The General Counsel, Respondent, and the charging parties were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues, was afforded all parties. The Trial Examiner granted a

motion by the General Counsel, concurred in by counsel for the charging parties, to strike certain portions of Respondent's answer.²

At the conclusion of the hearing the undersigned granted a motion by the General Counsel to conform the pleadings to the proof in formal matters, but reserved ruling on a motion by Respondent to dismiss the complaint. This motion is disposed of by the recommendations hereinafter made. The parties waived oral argument and were granted until August 13 to file briefs and/or proposed findings of fact and conclusions of law with the undersigned. Subsequently, this time was extended by the Chief Trial Examiner to September 19. On this date Respondent filed Proposed Findings of Fact.

Upon the entire record in the case, and from his observations of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is a Nevada corporation having its principal office and place of business at San Francisco, California, and maintaining branch offices at New York City, Honolulu, Seattle, Los Angeles, Washington, D. C., and Shanghai, China. It is en-

²The portions which were stricken consisted, in substance, of allegations that the A.C.A. had not complied with Section 9 (f) (g) and (h) of the Act requiring the filing and financial and other reports and non-Communist affidavits.

gaged in the transmission of international radio communications between the United States and other countries. During the year 1948 Respondent purchased communications equipment valued at approximately \$50,000, about 50 per cent of which was shipped into the State where used from other States of the United States. During the same year Respondent received revenue in excess of \$250,000 for its services in transmitting messages to and from continental United States and other parts of the world.

Respondent admits that it is engaged in interstate commerce within the meaning of the Act.

II. The Labor Organization Involved

The A.C.A. is a labor organization admitting to membership employees of Respondent. It is affiliated with the Congress of Industrial Organizations.

III. The Alleged Unfair Labor Practices

A. The Alleged Discriminatory Discharges

1. Charles Jones

Jones first came to work for Respondent on February 22, 1947. At the time of his discharge on January 21, 1949, he was working as an automatic painter operator under the supervision of Leo Bash, chief operator. Before entering Respondent's employ Jones had had about 30 years experience in the communications field, much of it as an automatic printer operator and point to point oper-

ator, although on machines different from those used by Respondent. During the time he was employed by Respondent Jones punched on all the circuits in the operating room, including the Manila and Shanghai units. Most of his work, however, was on the Shanghai circuit to which he was transferred from the Manila circuit, at his own request, shortly after coming to work.

Jones was a member of A.C.A. when he was employed by Respondent, and continued his activities in behalf of that organization thereafter. A previously executed contract between Respondent and A.C.A. expired on August 15, 1948, and no new contract was entered into. The Respondent, however, continued in effect most of the substantive provisions of the contract respecting wages, hours, and working conditions. Jones was a member, along with other employees, of the A.C.A.'s Grievance Committee which conducted negotiations for a new contract and in addition discussed grievances with management in accordance with the procedure outlined in the contract. He was, in addition, one of 8 shop stewards among the approximately 20 union members in Respondent's operating room. Jones' activity in the Union was, of course, well known to Respondent.

In January, 1949, Jones bid for and obtained a transfer to the noon to 8 p.m. watch, starting on January 17. His work assignments on this watch were the usual ones and included the relief of other operators during their lunch periods, and other miscellaneous work until 4:30 p.m. From

that time until the close of the watch at 8 p.m. he punched messages on the Manila circuit. This circuit is financially Respondent's most important one and carries the heaviest traffic. It is busiest during the hours Jones was assigned to it because it covers the close of business in San Francisco, when the greatest number of messages are filed, and the opening of business in Manila when speedy delivery of messages is of prime importance. On Jones' previous watch he had punched for the most part on the Shanghai circuit where speed in punching, though desirable as always, was not of first importance.

On January 19, Bruce, not a member of A.C.A., called Bash's attention to a form that Jones was using in transmitting certain messages on the Manila circuit which was different from the form currently used by Respondent. Bash immediately took the matter up with Jones and directed him to use the correct form thenceforth, which Jones did. On the following day, January 20, Jones re-opened the discussion about the form with Bash, and remarked that he had concluded that Bash was going to "pick (his) work to pieces" and that he did not intend to put up with it. Later the same day, Bash and Jones had another conversation in which Jones called Bruce a "fink" and objected to her having gone to Bash instead of directly to him about the form he had used. Bash objected to the application of this term to Bruce and a discussion took place during which Jones accused Bash of having called him a Communist, to which Bash replied that he only called Jones a "fellow traveler." The argu-

ment was heated and blows were narrowly averted.

Just prior to Jones' time to punch on the Manila circuit that afternoon, James McDowell, Jones' immediate supervisor, reported to Bash that unless Jones improved his speed McDowell would have to have an additional operator assigned to that circuit. Bash then approached Jones and told him that his work was not satisfactory so far as its quantity was concerned, that he would have to punch faster, and that, instead of transmitting on the Manila circuit that evening, he was being assigned to the Shanghai circuit on the same watch for about 2 weeks³ where he was to practice punching during his idle moments. Jones, according to his own testimony, told Bash that he considered the order to practice an insult, and that he was punching as fast as he could and keep up with his usual standard. Upon Bash's asking him if he would comply with the order to practice while on the Shanghai circuit Jones replied flatly that he would not. Bash left Jones and prepared a report of the incident to James McPherson, assistant manager, while Jones took over the Shanghai circuit. Jones admitted, while testifying, that he did not practice while on the circuit, as Bash had directed him to do.

Jones' place on the Manila circuit was taken by Malcolm Parks, chairman of the shop committee,

³Jones' testimony is silent as to the length of time he was to spend on the Shanghai circuit, and the finding that it was for about 2 weeks is based upon Bash's testimony, which the undersigned credits on this point.

for the A.C.A.,⁴ who was transferred for that purposed from the Shanghai circuit.

On the following morning, January 21, Bash conferred in person with McPherson, told him that he could not "take it" any longer from Jones, and that if he were not disciplined he, Bash, would resign as chief operator. Later during that morning, upon reporting for work, Jones was called to McPherson's office where McPherson asked Jones if it was true that he refused to practice punching on the Shanghai circuit as ordered by Bash, and Jones replied that it was, repeating as the reason for his refusal that the order was intended only as an "insult." Jones, together with Rudolph Niemi, who was present as the former's representative,⁵ told McPherson that Respondent was about to discharge the wrong man, that Bash was causing all the "trouble" in the operating room, and that he should be discharged instead of Jones. McPherson then in

⁴This finding is based upon Bash's testimony that upon transferring Jones to the Shanghai circuit he told him to tell Parks to come over to the Manila circuit. The testimony of both Jones and Parks is silent on this point, but it seems a reasonable inference that Bash's order was complied with in this respect, and that Parks filled in for Jones on the Manilla circuit. There was no difference in pay between the two circuits.

⁵Respondent's practice was to permit an employee with a grievance to be represented by some other employee in lieu of a union representative, as had been the case before the expiration of the 1947 contract.

formed Jones that his employment was terminated.

Conclusions as to Jones' Discharge

Respondent advances as its reason for discharging Jones that he was insubordinate in refusing to practice on the Shanghai circuit as ordered to do by Bash. The General Counsel's contention is that he was discharged because of his union activity. If this contention is to be upheld it would have to be on the theory that Jones' refusal to comply with Bash's order was only the pretext for his discharge, or that it was intended to provoke Jones into a breach of plant discipline. The seriousness of the refusal, in and of itself, as affecting discipline can hardly be denied.

There is no substantial evidence in the record that Bash's direction to Jones was prompted by anything else than legitimate business considerations. Jones' own reason for his refusal to obey Bash's instructions was, and is, simply that he was punching at as great a speed as was consistent with accuracy, and that he was "insulted" by Bash's order to practice during his spare time on the Shanghai circuit. Bash's reasonableness in so instructing Jones is not in issue, except to the extent that a clearly unreasonable direction might argue that Respondent was motivated by other considerations, to wit, Jones' activity on behalf of the A.C.A. However, it should be borne in mind that Jones had been on the noon to 8 p.m. watch, where his time was devoted mainly to the important Manila circuit, for only a few days, and that it might reasonably be expected that his punching would not

be as satisfactory as it had been on his previous watch where he had worked principally on the less important Shanghai circuit. Moreover, Jones' transfer to the Shanghai circuit was stated to be for only 2 weeks, and it in no sense represented a demotion. If Bash meant to discriminate against Jones because of his activity in behalf of the A.C.A. it is hardly likely that he would have transferred Parks from the Shanghai circuit to take Jones' place on the Manila circuit. Parks was shop chairman for the A.C.A. and, if anything, more active on behalf of that organization than Jones.

It is clear from the record that Bash, whether correctly or not, viewed the A.C.A. as an organization influenced by Communists, and Jones himself as a "fellow traveler."⁶ Respondent similarly, it is evident from the entire record, did not intend to deal with the A.C.A. if it could be avoided, or at least until it had filed the affidavits required by the Act. It is manifest that these considerations led to a very considerable hostility by Bash toward Jones, and it is conceivable that they may have influenced Respondent in discharging him. It would seem as much beside the point, however, to speculate to what extent they may have motivated Bash, as it would be to speculate whether Jones or the A.C.A. may have intended to disrupt and impede Respondent's operations so as to render it more amenable to recognizing the A.C.A. as the employees' bargaining representative, as it had previously been.

⁶Bash's antipathy to the A.C.A. is hereinafter more fully discussed.

The fact is that Jones flatly and admittedly disobeyed an order which on its face was not only legitimate but reasonable. Neither the order itself nor Respondent's enforcement of it by discharging Jones is shown by substantial evidence to have been motivated by Respondent's dislike of the A.C.A. or Jones part in its activities, and the undersigned finds that they were not.

2. The Strike in the Operating Room and The Discharge of the Strikers

Jones' discharge by Respondent had an immediate repercussion. Jones went from McPherson's office to a meeting of the A.C.A. scheduled at 1:30 p.m. for members on the 4 p.m. to midnight shift. At this meeting the members voted to protest Jones' discharge to management. Accordingly, at approximately 4:30 p.m., Jones and Parks returned to the operating room where Parks demanded of Bash that Jones be reinstated. Bash replied that he himself had not discharged Jones. The A.C.A. members then on watch, whose names are included in the caption hereof, left their circuits and joined the group consisting of Bash, Jones, and Parks. A general discussion followed during which Bash was told that he "couldn't get away with" discharging Jones. Bash told the operators to go back to their circuits, but instead they sat around in the operating room leaving the circuits unmanned. Bash informed McPherson of the situation and McPherson took it up with Boatwright, Respondent's president. Shortly after 5 p.m. Bash, upon

orders from McPherson, again asked each of the operators to return to his circuit. Each replied, in substance, that he would do so only when Jones was reinstated in his job. In accordance with McPherson's instructions Bash then told the group that they were discharged.

Following this the employees went to McPherson's office. In reply to McPherson's inquiry as to whether they were going to return to work, and his statement that their jobs were waiting for them, he was told, as Bash had been, that they would not work until Jones was put back. During the conversation the employees urged that Respondent discharge Bash, instead of Jones, which McPherson refused to do, again urging them to return to work. The employees repeated their demand that Jones be reinstated as a condition of their resuming work, and McPherson told them that they were discharged.

Another meeting of the A.C.A. took place that evening, attended by those members on the 8 a.m. to 4 p.m. and midnight to 8 a.m. watches, as well as those employees on the 4 p.m. to midnight watch who had just been discharged. It was decided that another protest would be lodged with management by the night shift during the change of watch. Shortly after midnight Parks, this time accompanied by Albert Hinde, one of the previously discharged operators, approached Bash and the events of the afternoon repeated themselves. The A.C.A. operators on the night watch left their circuits and joined the group around Bash. Parks, as spokesman, repeated the protest as to Jones' discharge,

and Bash answered that the matter was out of his hands. The operators made it clear that none of them would return to work until and unless Jones was reinstated. Upon Bash's failure to give any such assurance, the operators sat around the operating room as had the group in the afternoon. Respondent manned some of the circuits with supervisors and a few operators from the day shift. Somewhat later, Bash told the group of operators that they were discharged and ordered them to leave the premises, which they did.

3. The Discharge of Guerrero, Wheeler, and Friend^{6a}

(a) Paul Guerrero

On Saturday evening, January 22, the day following the above events, Paul Guerrero, an operator on the day watch, had a friend telephone the operating room that he could not report to work at 8 a.m. Sunday, January 23, his next day to work, because of illness. When Bash came on duty Sunday afternoon he telephoned Guerrero to confirm the reason for his absence and was told by Guerrero that he had a cold. Bash told him to report for duty immediately and that he would be sent home if Bash was satisfied he was sick. Guerrero, however, did not report for duty until 8 a.m. on Monday, January 24. Upon his arrival Bash asked Guerrero for a doctor's certificate attesting his

^{6a} Guerrero and Wheeler were off duty on Friday, January 21.

illness the previous day, and when Guerrero stated that he had none Bash discharged him.

The undersigned finds it unnecessary to discuss the evidence as to whether a doctor's certificate was generally required of employees when absent because of sickness. Guerrero was an evasive and unconvincing witness, and the undersigned does not regard his testimony that he was sick as credible. He admitted while testifying that he was at the A.C.A. meeting the evening before his claimed illness of Saturday, that the telephone call to the operating room at Saturday evening was made from his bedside, and that he was not too sick to have telephoned himself, stating that he didn't know why he had not done so except that it was more "convenient" to have a friend call.

It is likely that Guerrero wished to appear to support the other members of the A.C.A. in their protest by not reporting for work, and that his illness was only diplomatic. But whatever Guerrero's motives, Bash was justified in believing that he was feigning illness, and that he was aligning himself with his fellow A.C.A. members in going on strike.

(b) Leslie Wheeler

On Sunday evening, January 23, Bash telephoned Leslie Wheeler, an operator on the midnight to 8 a.m. watch. Bash's testimony is that he asked Wheeler whether he was coming to work that evening as usual, urging him to do so, and that Wheeler said that he would be in. Wheeler's testimony is that Bash told him, in effect, that he was discharged

along with the others. The undersigned finds that Bash's testimony on this point is in accord with the facts, and that Wheeler should have understood that his job was open to him if he wanted it, but that instead he preferred to support his fellow employees. There would seem to have been no point in Bash's telephoning Wheeler unless it was for the purpose of asking him to come to work. Moreover, both Bash and Wheeler testified that the former reminded Wheeler that he was colored, and "had two strikes on him" for this reason. There seems no reason to doubt Bash's testimony that he meant it would be more difficult for Wheeler than for other employees to obtain another job, and is consistent with Bash's urging him to keep the one he had.

Wheeler, however, appears to have changed his mind and showed up in the operating room at 8 a.m. on Monday, at the end of his usual watch, about the same time that Guerrero and Lillie Friend, an operator whose discharge is next discussed, arrived. He was met by Bash who reminded him that he was supposed to have reported at midnight on his circuit. The record is silent as to what Wheeler responded. Bash, however, told Wheeler he was discharged.⁷

⁷A few days later, while on the picket line, both Guerrero and Wheeler received telegrams from Respondent saying that it wished to review the two discharges, and requesting them to see McPherson. Both ignored the invitation.

(c) Lillie Friend

At 8 a.m. on Monday morning, January 24, Friend, an operator on the day shift, reported for her first scheduled watch following the happenings of the previous Friday. As has been stated, she arrived at the operating room at the same time as Guerrero and Wheeler. Bash asked Friend to go to work and a conversation ensued in which Friend accused Bash of being unreasonable in having discharged Jones and the other operators, and made it plain that she supported the others in their protest. Bash told her that she, too, was discharged.

Conclusions

It is abundantly clear from the record that the concerted action of the charging parties excepting Jones, in refusing to perform their work until Jones was reinstated, constituted a strike. Inasmuch as Jones' discharge has been found not to have been occasioned by his activities on behalf of the A.C.A. but by legitimate business reasons, it follows that the strike of the other employees in protest was not an unfair labor practice strike. It is clear that any or all of them could have had their jobs back at any time before they were filled by new employees. It is not in dispute that the strike is still in effect, that there has been no request for reinstatement following the strike, and that Respondent has filled the strikers' jobs with other and permanent employees. In these circumstances, and under familiar decisions of the Board, Respondent is not obligated now to reinstate the strikers.

B. Other Alleged Interference, Restraint,
And Coercion

Sylvia Pottle was a service clerk on the 4 p.m. to midnight shift, and one of those who participated in the protests of Jones' discharge on January 21. Shortly after 5 o'clock that afternoon, after the group surrounding Bash had broken up, Bash followed Pottle and Pauline Smith, a traffic clerk, to the locker room and engaged the former in conversation. Bash, according to Pottle's testimony, supported in all essentials by that of Smith, told Pottle that he "felt terrible" about the incidents of that afternoon, but that she was "backing the wrong union," to which Pottle replied that she did not think so. Bash went on to say, according to Pottle, that Respondent had "to get rid of the Communists," that the A.C.A. would never come back into the plant, and that if Pottle was wise she would get out of the A.C.A. "while the getting was good." Bash testified that he did not recall having this conversation. The undersigned found Pottle and Smith to be credible witnesses, and accepts their testimony as true.

Both Pottle and Bash testified that the latter telephoned Pottle on the night of January 23 during which Bash read to her his report to McPherson previously referred to, describing Jones' recalcitrance, and sought her approval of it. According to Pottle the conversation lasted 40 minutes. She testified to it, in part, as follows:

Q. Well, as best you recall it, what he said and what you said.

A. . . . He says, "If I knew . . . that this

letter would have caused such a bombshell," he says, "I never would have submitted it in the first place."

Q. What did you say to that?

A. I said, "Leo, that is the trouble with you, you are so hotheaded, you do things before you think." I says, "That is what has been the trouble right along." He said, "I know it," he said, "I realize that," and he says, but he says, "It just had to come to a head sometime"

. . . "Well," I says, "I think I have a general idea of what it was all about, I think the Company was going to start with Chuck Jones and go right down the line."

He says, "You have a general idea."

Bash, although admitting while testifying that he told Pottle that the A.C.A. should have signed the non-Communist affidavits required by the Act, and otherwise criticized the A.C.A., stated that he did not recall having said that the trouble "had to come to a head sometime," and denied that he said in response to Pottle's statements concerning starting the discharges with Jones, that she "had the general idea."

The entire record shows Bash to be of an excitable and undiplomatic temperament, albeit the undersigned did not find him generally unreliable as a witness. The statements attributed to him by Pottle who impressed the undersigned favorably, are in keeping with his excitability, his dislike of

the A.C.A., and his willingness to use any stigma to beat a dogma. The undersigned finds that he made the statements in substance as testified to by Pottle.

Nevertheless, the undersigned does not find Bash's statements to Pottle either in the locker room or over the telephone to be, in the circumstances of this case, violative of the Act. His statement that Pottle should get out of the A.C.A. "while the getting is good," is equivocal and does not, in the undersigned's view, constitute or imply a "threat of reprisal or force or promise of benefit" proscribed by Section 8 (c) of the Act.

With respect to his telephone conversation with Pottle, his statement that she "had (the) general idea" was in acquiescence to Pottle's own suggestion that it was the Respondent's intention to discriminate against A.C.A. members generally. It has been found above that such was not, in fact, Respondent's purpose in discharging Jones, and while this does not in the usual circumstances exculpate a supervisor in making a statement to that effect, whether true or not, it does tend to emphasize the fact that the suggestion that Jones was discriminated against did not originate with Bash, but with Pottle. He finds that Bash's statements to Pottle were not violative of the Act.⁸

⁸In the same category are other statements of Bash which, although hostile to the A.C.A., do not contain a threat of reprisal or force, or promise of benefit, such as those testified to by Lorraine Conger and Daniel Scheaffer, to the effect that if they insisted on tying themselves to "the Communist kite" they "could sink with it." The record reflects various statements by Bash of this nature.

Conclusions of Law

1. American Communications Association, affiliated with the Congress of Industrial Organizations, is a labor organization within the meaning of Section 2 (5) of the Act.

2. Respondent, Globe Wireless, Ltd., is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

3. Respondent, Globe Wireless, Ltd., has not engaged in any unfair labor practices within the meaning of the Act.

Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, the undersigned recommends that the complaint herein be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a

brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefore must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 28th day of October, 1949.

/s/ HORACE A. RUCKEL,

Trial Examiner.

[Title of Board and Cause.]

STATEMENT OF EXCEPTIONS TO INTER-
MEDIATE REPORT OF THE TRIAL
EXAMINER

Now comes Globe Wireless Ltd., Respondent in the above entitled matter, and files the following exceptions to the intermediate report dated October 28, 1949, with the National Labor Relations Board.

Respondent asserts that the factual conclusions stated in III(A) of the Trial Examiner's report are correct, as is his conclusion that the conversations referred to III(B) involved no illegal element. It further asserts that the record fully supports his conclusion that Respondent has engaged in no unfair labor practices within the meaning of the Act.

However, Respondent files this statement of exceptions to the Trial Examiner's report in order to preserve its rights in view of the provisions of Section 203.46(b) of the Rules and Regulations of the Board. The intermediate report fails to include findings of facts, required from the record, that further support the conclusions of the Trial Examiner. It also includes statements in the findings of fact somewhat suggestive of impropriety in Respondent's actions and that are erroneous and without support in the record; these errors are immaterial and not prejudicial so long as the conclusions of the intermediate report are sustained. We call

these errors to the attention of the Board so that it will be aware of the true facts should exceptions to the conclusions of the Trial Examiner be filed with the Board. There are also other errors, immaterial and not prejudicial if the Board does not reconsider the conclusions of the intermediate report, but that may be of significance should such reconsideration be necessary.

The following statement of exceptions is therefore in the nature of further support for the conclusions of the intermediate report and is to indicate to the Board additional reasons why the conclusions should be adopted by the Board.

I.

Exceptions With Respect to Findings Made by the Trial Examiner

* * *

4. Respondent excepts to part of the finding (p. 5, lines 23 to 25) reading as follows:

“It is clear from the record that Bash, whether correctly or not, viewed the A.C.A. as an organization influenced by Communists, and Jones himself as a ‘fellow traveler.’⁶ Respondent similarly, it is evident from the entire record did not intend to deal with the A.C.A. if it could be avoided, or at least until it had filed the affidavits required by the Act. It is manifest that these considerations led to a very considerable hostility by Bash toward Jones, and it is conceivable that they may have influenced

Respondent in discharging him. It would seem as much beside the point, however, to speculate to what extent they may have motivated Bash, as it would be to speculate whether Jones or the A.C.A. may have intended to disrupt and impede Respondent's operations so as to render it more amenable to recognizing the A.C.A. as the employees' bargaining representative, as it had previously been."

"6Bash's antipathy to the ACA is hereinafter more fully discussed."

and the failure to find, instead:

"It is clear from the record that Bash, whether correctly or not, viewed the 1949 A.C.A. organization as dominated by the Communists, and Jones himself as a 'fellow traveler' and that Bash had a burning hatred of Communists of all types and descriptions, without any relation to their being in or outside of labor organizations.⁶ It is manifest that these considerations led to a very considerable hostility by Bash toward Jones; however such feeling was not because of Jones' membership in or activities on behalf of the A.C.A., Bash having long been an active A.C.A. member who had been discharged by Mackay for A.C.A. activity. It is further clear that Respondent was at this time refusing to deal with the A.C.A. until certification by the Board but was advising its employees that they were entirely free to engage in any legitimate union activity. It is

conceivable that union membership or activity might have influenced Respondent in discharging Jones. It would seem as much beside the point, however, to speculate to what extent they may have motivated Bash, as it would be to speculate whether Jones or the A.C.A. may have intended to disrupt and impede Respondent's operations so as to render it more amenable to recognizing the A.C.A. as the employees' bargaining representative, as it had previously been. The examiner refused to permit Respondent to introduce evidence as to this matter and in connection therewith Respondent offered to prove that the A.C.A. officials had admitted facts showing it was not the choice of the majority in the appropriate bargaining unit including the San Francisco operating room."

"⁶Bash's antipathy to the Communists and his feeling toward the 1949 A.C.A. is hereinafter more fully discussed."

5. Respondent excepts to part of the finding of the Examiner (p. 6, line 50, and p. 7, lines 1 through 5) reading as follows:

"When Guerrero stated that he had none, Bash discharged him," and "It is likely that Guerrero wished to appear to support the other members of the A.C.A. in their protest by not reporting for work, and that his illness was only diplomatic. But whatever Guerrero's motives, Bash was justified in believing that he was feigning illness, and that he was aligning

himself with his fellow A.C.A. members in going on strike."

and to the failure to find, instead:

"When Guerrero stated that he had none, Bash advised him that he was discharged. Guerrero thereupon left the operating room and then joined, for the first time, the group on strike. Thereafter Guerrero failed and refused to accept the request of McPherson, Bash's superior, that Guerrero meet with McPherson to review the matter of such discharge and indicating Guerrero would be returned to work if sufficient ground for discharge did not exist." And, "Bash was justified in believing that Guerrero was not ill and was not truthful in giving illness as a reason for not being at work, and Bash did so believe when he told Guerrero that he was discharged. Guerrero did not join his fellow A.C.A. members in the strike until after Bash advised him that he was discharged."

6. Respondent excepts to part of the finding of the Examiner (p. 7, lines 27 through 33) reading as follows:

"Wheeler, however, appears to have changed his mind and showed up in the operating room at 8 a.m. on Monday, at the end of his usual watch, about the same time that Guerrero and Lillie Friend, an operator whose discharge is next discussed, arrived. He was met by Bash who reminded him that he was supposed to have

reported at midnight on his circuit. The record is silent as to what Wheeler responded. Bash, however, told Wheeler he was discharged.⁷

“⁷A few days later, while on the picket line, both Guerrero and Wheeler received telegrams from Respondent saying that it wished to review the two discharges, and requesting them to see McPherson. Both ignored the invitation.”

and to the failure to find, instead:

“Wheeler, however, showed up in the operating room at 8:00 a.m. on Monday at the end of the watch that he had advised Bash he would come in to cover. He came in at about the same time that Guerrero and Lillie Friend arrived. He was met by Bash who reminded him that he was supposed to have reported at midnight on his circuit. Wheeler responded evasively and gave no reason for his failure to have reported. Thereupon Bash told Wheeler he was discharged. Wheeler thereupon left the operating room and then joined, for the first time, the group on strike. While on the picket line that afternoon he was handed a telegram from Respondent requesting him to see Bash’s superior, McPherson, to go over the matter of discharge for the purpose of returning him to work if there was not good cause for discharge. Wheeler ignored this invitation.

7. Respondent excepts to part of the finding of the Examiner (p. 7, lines 41 to 44) reading as follows:

“Bash asked Friend to go to work and a conversation ensued in which Friend accused Bash of being unreasonable in having discharged Jones and the other operators and made it plain that she supported the others in their protest. Bash told her that she too was discharged,”

and to the failure to find, instead:

“Bash asked Friend to go to work. She then responded at length in discussion of the discharge of Jones, Bash replied by merely indicating that her job was there and her work was there to be performed. She left the operating room after Wheeler and Guerrero were each told that he was discharged. She joined the picket line without having been told she was discharged and did not receive a telegram like those sent Guerrero and Wheeler.”

8. Respondent excepts to part of the finding of the Examiner (p. 8, lines 8 through 22) reading as follows:

“Sylvia Pottle was a service clerk on the 4 p.m. to midnight shift, and one of those who participated in the protest of Jones’ discharge on January 21. Shortly after 5 o’clock that afternoon, after the group surrounding Bash had broken up, Bash followed Pottle and Pauline Smith, a traffic clerk, to the locker room and engaged the former in conversation. Bash, according to Pottle’s testimony, supported in all essentials by that of Smith, told

Pottle that he 'felt terrible' about the incidents of that afternoon, but that she was 'backing the wrong union,' to which Pottle replied that she did not think so. Bash went on to say, according to Pottle, that Respondent had 'to get rid of the Communists,' that the A.C.A. would never come back into the plant, and that if Pottle was wise she would get out of the A.C.A. 'while the getting was good.' Bash testified that he did not recall having this conversation. The undersigned found Pottle and Smith to be credible witnesses, and accepts their testimony as true."

and to the failure to find, in lieu of the last sentence quoted above, the following:

"While Pottle and Smith were witnesses entitled to considerable credibility, their recollection as to details was not precise and Pottle particularly, was inclined to generalizations and to coloring testimony in her favor. In view of the denial to the Respondent of the use of the deposition in preparation for the hearing and in view of the availability to the General Counsel of statements given by Bash and others in advance of the hearing and before the issues had jelled and in view of Bash's credibility in general and the failure of the General Counsel to indicate that any contrary expression had been made in Bash's previous statement to the representatives of the General Counsel's office, and in view of the presence of Miss Smith at

the hearing while Miss Pottle was testifying over the objection thereto by Respondent, it is concluded that the statements, if made, were not unlawful and are not admissible as evidence in view of Section 8 (c) of the Act and, at least, in so far as this proceeding is concerned, were not made."

9. Respondent excepts to part of the finding of the Examiner (p. 9, lines 2 and 3) as follows:

"The undersigned finds that he made the statements in substance as testified by Pottle."

and not finding, instead, with respect to the telephone conversation of January 23 (see p. 8, line 24 through line 3 of page 9 and lines 13-22 of page 9):

"Pottle testified that the gist of this conversation was an apology from Bash to Pottle in which he was telling her that he was sorry that the matter had been precipitated. The record shows that in no way either was it an attempt, or had it any tendency, to interfere, restrain or coerce anyone, in exercising the rights guaranteed under Section 7. It was a statement of views in no way even suggesting any threat of force or reprisal for carrying on any action or any promise of reward for refraining or withdrawing from such action. The statements, if made, were not unlawful and are not admissible as evidence in view of Section 8(c) of the Act and so it is concluded they were not made."

10. Respondent excepts to part of the finding of the Examiner (p. 8, line 61, to p. 9, line 3 and p. 9, lines 13 to 22, etc.), reading as follows:

“The statements attributed to him by Pottle who impressed the undersigned favorably, are in keeping with his excitability, his dislike of the A.C.A., and his willingness to use any stigma to beat a dogma. The undersigned finds that he made the statements in substance as testified to by Pottle. * * *

“With respect to his telephone conversation with Pottle, his statement that she ‘had (the) general idea’ was in acquiescence to Pottle’s own suggestion that it was the Respondent’s intention to discriminate against A.C.A. members generally. It has been found above that such was not, in fact, Respondent’s purpose in discharging Jones, and while this does not in the usual circumstances exculpate a supervisor in making a statement to that effect, whether true or not, it does tend to emphasize the fact that the suggestion that Jones was discriminated against did not originate with Bash, but with Pottle. He finds that Bash’s statements to Pottle were not violative of the Act.”

and the failure to find in lieu of the foregoing, as follows:

“Bash, too, was highly critical of all Communists and apparently of the opinion that the A.C.A. leadership was controlled by the Communists. In this conversation, Bash expressed

his opinion that unions were a good thing, that the A.C.A. had made a mistake in not filing the Communist affidavits and that it would have been recognized if it had filed such affidavits and stated that he was unhappy that his action leading to the discharge of Jones had led to the 'sitdown strike' and exhibited a deep regret that his action had led to it. But in this conversation he in no way sought to coerce, interfere with or restrain Pottle in her actions or to threaten Pottle with force, threat of reprisal or force or promise of benefit. Bash categorically denied telling Pottle she was correct in her thought that Respondent was going to go down the line starting with Jones. There is no evidence as to what this meant.

"In view of the direct conflict in the testimony as to whether Bash confirmed a statement by Pottle that she thought Respondent was 'going to start with Chuck Jones and go right down the line' and giving consideration to the equivocal nature of this statement, particularly in view of the finding that Jones was discharged for insubordination in refusing to improve the quantity of his work, and in view of the availability of statements of witnesses, including Bash, to the General Counsel and the unavailability of depositions to counsel for Respondent, there is no substantial evidence that Bash made any statement to Pottle that Respondent had an intention to discriminate against A.C.A. members generally."

II.

Exceptions With Respect to Relevant Findings
The Examiner Failed to Make

Respondent files the following exceptions to the report of the Examiner, raising thereby his omissions to make findings as to detailed and ultimate facts that are fully established by the record and that provide further support for the Examiner's conclusions of fact accepted by Respondent and his conclusions of law. Exception is hereby taken to the Examiner's failure to include in his findings the following:

1. Bash had for many years been an active and militant member of the A.C.A., being one of the employees involved in the Mackay strike of October, 1935, and was one of the four striking operators in San Francisco who refused to return to work at the breaking of the Mackay strike on October 8 and who were eventually returned to work with Mackay, years later, when the Board's order (1 N.L.R.B. 201) was ordered enforced by the Supreme Court, 304 U. S. 333. Bash remained a member of the A.C.A. until he took a withdrawal card upon his being promoted to the position of Chief Operator with Respondent in the latter part of September, 1947.

* * *

3. When Bash asked Jones to practice, Bash met Jones and discussed the matter with him in a place where no one could overhear the criticism

of Jones. In so doing, Bash used more tact and exercised more consideration for Jones than he frequently did in dealing with employees, for the record shows that Bash, without having had any intention of creating a scene or of embarrassing Jones, might well have "roared" the order to practice aloud in the operating room. This would have meant that the pro-A.C.A. and the anti-A.C.A. factions would have heard it.

* * *

6. The charging parties who deserted their circuits at approximately 4:30 p.m. on January 21 and at approximately 12:30 a.m. on January 22, did so after they had in the routine fashion relieved their predecessors on watch and taken over the circuits for their eight-hour watch. Their subsequent desertion, during their active time on watch, was in direct and flagrant violation of the rules of the respondent. These rules had been established, and carefully publicized to Respondent's employees, without regard to possible concerted activity, protected or unprotected, and for the purpose of providing for efficient operations of the company and the continuous manning of its circuits as required by law and for the convenience of the public using Respondent's public utility services. In August, 1948, the A.C.A. group within the employ of Respondent deserted their circuits and prevented their operation while the group sought to obtain assurances that the employer would sign a new agree-

a paid international representative of the A.C.A., asked for their pay checks while Respondent was advising the group that all their jobs were there available for them, but that Jones would not be reemployed or Bash discharged; the employees thereby terminated their employment with Respondent.

11. In view of the public utility character of Respondent's business and the nature of the work stoppage and the violation of non-discriminatory rules by each one participating therein, the action of the employees who went on strike was not concerted activity within the protection of Section 7 of the Act.

12. Guerrero and Wheeler each quit his job when he failed and refused to respond to the invitation from Respondent for the review of the matter of Bash's telling him that he was discharged.

13. The Globe employees other than Jones involved in this proceeding were engaged in concerted activity having the unlawful purpose of seeking to require respondent to discriminate in favor of Jones because of his membership in the A.C.A. and thus to encourage membership in the A.C.A. and to discourage membership in the rival organization and having the unlawful purpose of compelling Respondent to interfere with, restrain and coerce the employees who opposed the A.C.A. in their exercise of their right to remain outside of the A.C.A. or to join a rival labor organization.

III.

Other Exceptions to the Intermediate Report And to the Proceedings

1. Respondent excepts to the rulings of the Regional Director and the Trial Examiner denying Respondent's applications for subpoenas and denying Respondent's requests for the taking of depositions.

2. The Examiner erred in striking the Sixth, Seventh, Eighth, and Ninth defenses of Respondent's answer.

3. The Examiner erred in considering the allegations of unfair labor practices incorporated in paragraphs III and VI of the complaint and in considering the sections of paragraphs VII and VIII of the complaint in so far as they refer to and were based upon paragraphs III and VI of the complaint.

4. The Examiner erred in considering the matters covered by Section III(B) of the intermediate report. There is no allegation in the complaint that any of the incidents referred to in such section constituted an unfair labor practice. No charge, on which this case is based, asserts that any such incident or any similar incident constituted an unfair labor practice; such charges refer only to entirely different facts and alleged unfair labor practices; more than six months has elapsed since such acts took place.

5. The Examiner erred in refusing to consider evidence offered by Respondent and indicated that no evidence would be accepted with respect to Respondent's contention that any concerted activity of the charging parties had an unlawful purpose and was carried on by unlawful means.

6. The Examiner erred in refusing to permit the respondent to question witnesses with respect to the planning of the desertion of the circuits and the instructions given to persons who were to participate therein and the action taken by the striking employees during the period following the establishment of the picket line. The Examiner also erred in refusing to consider evidence with respect to the choice of the strikers to cause a precipitous work stoppage while on watch rather than making a protest on their own time, to which the Respondent had indicated willingness to give consideration, or by a protest by one representative, to which procedure Respondent had agreed.

7. The Examiner erred in cutting off the Respondent in presenting evidence to show that the strikers were free to return to work, prior to their replacement by new permanent employees, had they given up their condition that Jones first be reemployed and to show that each of the individual strikers was free to return to work prior to his replacement by a new permanent employee had he given up his condition that Jones first be reemployed.

8. The Examiner erred in denying Respondent's

motion to exclude witnesses from the hearing room prior to their testifying.

Dated: San Francisco, California, December 7, 1949.

Respectfully submitted,

/s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHEGLER &
HARRISON,

Counsel for Respondent.

Received Dec. 13, 1949, NLRB.

[Title of Board and Cause.]

COUNSEL FOR THE GENERAL COUNSEL'S¹
EXCEPTIONS TO THE INTERMEDIATE
REPORT

The General Counsel of the National Labor Relations Board hereby excepts to the Intermediate Report of the Trial Examiner, dated October 28, 1949, in the above-entitled proceeding in the following particulars:

Page 3, Lines 10-13*

1. To that part of the findings of fact which states that Jones had had about 30 years' experience in the communications field, much of it as an

¹Hereinafter referred to as the General Counsel.

*Reference to Intermediate Report.

automatic printer operator and point to point operator, "although on machines different from those used by Respondent," whereas the record shows he had had experience on machines similar to those used by Respondent.

Page 3, Lines 25-28*

2. To the finding that Jones was a member, along with other employees, of the Grievance Committee which conducted negotiations for a new contract, whereas the record discloses that Jones was a member of the Negotiating Committee which sought to negotiate a new contract with Respondent and was also on the Grievance Committee which was separate and distinct from the Negotiating Committee.

Page 3, Lines 28-29*

3. To the finding, and the implication thereof, that Jones was one of 8 shop stewards among the approximately 20 Union members in Respondent's operating room, when the record shows that Jones played a greater part in meeting and dealing with management than other Union members.

Page 3, Lines 37-38*

4. To the finding that the Manila circuit is financially Respondent's most important one when the record contains no evidence to that effect or any evidence upon which to base such an inference.

*Reference to Intermediate Report.

Page 3, Lines 40-42*

5. To the finding that the speedy delivery of messages on the Manila circuit is of prime importance, when there is no such evidence.

Page 3, Lines 46-49*

6. To the failure, at this point, to find that Bruce was not only not a member of the A.C.A. but was an active member of the I.B.E.W., a rival union which was seeking to represent the Respondent's employees.

Page 4, Lines 1-4*

7. To the finding that McDowell, Jones' immediate supervisor, reported to Bash that unless Jones improved his speed he would have to have an additional operator assigned to the Manila circuit, when there is no such evidence in the record.

Page 4, Lines 1-4*

8. To the failure of the Trial Examiner to find that McDowell had aided and actively assisted the I.B.E.W., a rival union, in the campaign preceding an election held several months prior to the discharge of Jones.

Page 4, Lines 14-15*

9. To the finding that Bash left Jones and prepared a report of Jones' refusal to practice punching to McPherson, Assistant Manager, whereas the record discloses that Bash made up the report the

*Reference to Intermediate Report.

next day and that McPherson was Manager of the Respondent's San Francisco office.

Page 4, Lines 19-21*

10. To the finding that Jones' place on the Manila circuit was taken by Malcolm Parks, Chairman of the Shop Committee for the A.C.A., when the record contains no such evidence or any evidence from which such an inference could logically be drawn.

Page 4, Lines 26-30*

11. To the finding that Jones was called to McPherson's office where he was asked if it was true that he refused to practice punching as ordered by Bash whereas the record shows that McPherson had already determined to discharge Jones and he was called in to be told of that fact.

Page 4, Lines 34-35*

12. To the failure to find that McPherson had met with General Boatwright, senior vice-president of the Company, and Anderson, vice-president of Robert Dollar Company, the parent corporation, and that they had reached a decision to discharge Jones prior to McPherson calling in Jones.

Page 4, Lines 34-35*

13. To the failure of the Trial Examiner to find, at this point, that the Respondent deviated from its usual investigatory procedure when a supervisor

*Reference to Intermediate Report.

lodges a complaint against an employee and concluded to discharge Jones without having first obtained his version.

Page 4, Lines 45-46*

14. To the statement that the seriousness of Jones' refusal to practice, in and of itself, as affecting discipline can hardly be denied since a matter of discipline was not involved.

Page 5, Lines 1-3*

15. To the finding that there is no substantial evidence that Bash's direction to Jones was prompted by anything else than legitimate business considerations, since the record is replete with evidence to the contrary.

Page 5, Lines 1-3*

16. To the failure of the Trial Examiner to find, at this point, that Jones kept abreast of the flow of messages on the Manila circuit and was never behind and that delays in transmittal of messages, if any, were due to atmospheric conditions.

Page 5, Lines 3-6*

17. To the finding that Jones' own reason for refusing to obey Bash's instructions was that he was punching at as great a speed as was consistent with accuracy and that he was insulted by Bash's order, since the record also shows that Jones, in the light of his age and experience, was punching at his maximum speed.

*Reference to Intermediate Report.

Page 5, Lines 6-10*

18. To that part of the finding that Bash's reasonableness in so instructing Jones is not in issue, since one of the prime issues in this proceeding is whether Jones was discharged for union activity or for cause and the reasonableness of Bash's order under all the circumstances is an important factor to be considered in deciding this issue.

Page 5, Lines 6-10*

19. To the failure of the Trial Examiner to find that Bash had been a member of the I.B.E.W., a rival union.

Page 5, Lines 10-15*

20. To the statement that Jones had been on the noon to 8 p.m. watch where his time was devoted mainly to the important Manila circuit for only a few days, and it might reasonably be expected that his punching would not be as satisfactory as it had been on his previous watch where he had worked principally on the less important Shanghai circuit, since the record abundantly establishes that he had worked on the Manila circuit for many months on his prior watch.

Page 5, Lines 10-15*

21. To the failure of the Trial Examiner to find that when messages did not go out properly and promptly, McPherson usually took the matter up with McDowell and that McDowell has not

*Reference to Intermediate Report.

received any complaints from McPherson during the week in which Jones was discharged.

Page 5, Lines 17-20*

22. To the statement that if Bash meant to discriminate against Jones because of his Union activity it is hardly likely he would have transferred Parks to Jones' place on the Manila circuit, since there is no evidence to establish that Parks was transferred to Jones' place on the Manila circuit.

Page 5, Lines 19-20*

23. To the finding that Parks was more active on behalf of the Union than Jones, when the evidence establishes that Jones was more active and was so regarded by Parks and others.

Page 5, Lines 30-35*

24. To the gratuitous statement that it would seem as much beside the point to speculate to what extent Bash's and the Respondent's hostility toward the Union may have motivated Bash, as it would be to speculate whether Jones or the Union may have intended to disrupt and impede Respondent's operations so as to render it more amenable to recognize the Union, since the record is completely devoid of any basis for such finding or statement.

*Reference to Intermediate Report.

Page 5, Lines 30-35*

25. To the failure of the Trial Examiner at this point to find that the discharge of Jones was the result of a plan and scheme of the Respondent to rid itself of all A.C.A. adherents.

Page 5, Lines 37-38*

26. To the finding that Jones flatly and admittedly disobeyed an order which on its face was legitimate and reasonable, when the evidence overwhelmingly establishes the unreasonableness of the order and that it was a cloak in which to mask the Respondent's motive for Jones' discharge.

Page 5, Lines 38-42*

27. To the finding that neither the order nor Respondent's discharge of Jones is shown by substantial evidence to have been motivated by Respondent's dislike of the Union or Jones' activities on its behalf, when there is more than substantial evidence to the contrary.

Page 5, Lines 51-52*

28. To the finding that Parks demanded of Bash that Jones be reinstated, when the clear evidence shows that Parks protested the discharge and requested an opportunity to discuss it and was not given such opportunity.

Page 5, Lines 56-57*

29. To the finding that Bash was told by the

*Reference to Intermediate Report.

group of employees on the watch that he "couldn't get away with" discharging Jones, when the record fails to disclose any such statement by the group.

Page 6, Lines 1-5*

30. To the finding that Bash after 5 p.m. again asked each of the operators to return to his circuit and that each replied he would do so only when Jones was reinstated, when the record discloses that prior to that hour they had been "clocked out" by him and that at about 5 p.m. they again requested an opportunity to discuss the matter with a representative of management and stated their desire to return to their circuits and were there-upon discharged.

Page 6, Lines 5-6*

31. The Trial Examiner failed, at this point, to find that Malcolm Parks was discharged by Respondent while he was on his day off and that such discharge was solely for the reason that he sought to discuss Jones' discharge.

Page 6, Lines 9-11*

32. To the finding that McPherson inquired of the group as to whether they were going to return to work and their reply that they would not work until Jones was reinstated, when the evidence shows that they did not condition their return on Jones' reinstatement but stated they desired to return to their jobs although fired by Bash and requested

*Reference to Intermediate Report.

information as to Jones' discharge and the reasons therefore and were not given any.

Page 6, Lines 14-16*

33. To the finding that the group demanded of McPherson the reinstatement of Jones as a condition of their resuming work and McPherson then told them they were discharged, when the evidence establishes that they had previously been discharged by Bash and that the first question they asked McPherson upon seeing him was whether they were discharged and he confirmed that fact.

Page 6, Lines 28-29*

34. To the finding that the midnight to 8 a.m. watch made it clear that none of them would return to work until and unless Jones was reinstated, when the evidence does not support such a finding but establishes that they protested Jones' discharge and requested a meeting with someone in authority who would and could discuss the matter.

Page 6, Lines 33-34*

35. To the finding that somewhat later Bash told the midnight watch that they were discharged and ordered them to leave the premises when the evidence shows that he removed their time cards, told them they were fired and called the building guard to escort them out.

*Reference to Intermediate Report.

Page 6, Lines 52-54*

36. To the statement that it is unnecessary to discuss the evidence as to whether a doctor's certificate was generally required of employees when absent because of sickness, when the evidence shows that the Company, in the absence of a physician's certificate, only withheld pay and did not discharge an employee for failure to supply such certificate as was done in this instance.

Page 6, Lines 54-56*

37. To the finding that Guerrero was an evasive and unconvincing witness and that the Trial Examiner does not regard his testimony that he was sick as credible, since the record abundantly supports his claim of illness and the matter of whether he was ill or not is wholly immaterial to the issues in this proceeding and should not have been considered by the Trial Examiner in deciding the question of credibility or the issues.

Page 7, Lines 15-18*

38. To the finding that Bash's testimony with respect to his telephone call to Wheeler is in accord with the facts and Wheeler should have understood his job was open to him if he wanted it, but that instead he preferred to support his fellow employees, since the record supports Wheeler in his understanding that Bash had discharged him.

*Reference to Intermediate Report.

Page 7, Lines 18-20*

39. To the statement that there would seem to have been no point in Bash's telephoning Wheeler unless it was for the purpose of asking him to come to work, since the record shows that Wheeler had not indicated any prior intention of not reporting for work but had every intention to report.

Page 7, Lines 22-25*

40. To the finding that there seems no reason to doubt Bash's testimony that he meant Wheeler would have more difficulty obtaining another job and is consistent with Bash's urging him to keep the one he had, since the evidence is that Bash had discharged Wheeler.

Page 7, Lines 60-63*

41. To the implication in footnote 7 that there was a duty on the part of Guerrero and Wheeler to respond to McPherson's telegrams requesting them to see him for the purpose of reviewing their discharges, when they had no such duty and were properly exercising their rights under Section 7 of the Act.

Page 7, Lines 48-50*

42. To the finding and conclusion that the charging parties refused to perform their work until Jones was reinstated, since the record clearly establishes that they refused to return to their jobs until

*Reference to Intermediate Report.

management met with them for the purpose of discussing Jones' discharge.

Page 7, Lines 50-54*

43. To the finding and conclusion that Jones' discharge was not occasioned by his union activities but was for legitimate business reasons and that the strike of the other employees in protest was not protected concerted activity, since this finding and conclusion is against the great weight of the evidence.

Page 7, Lines 54-55*

44. To the finding and conclusion that any or all of the charging parties could have had their jobs back at any time before they were filled by new employees, since the evidence shows they had all been discharged for engaging in protected concerted activity and could only have their jobs back if they abandoned their rights under the Act.

Page 7, Lines 55-59*

45. To the finding and conclusion that there has been no request for reinstatement when the record contains evidence that such a request was made and rejected.

Page 8, Lines 1-3*

46. To the finding and conclusion that under familiar decisions of the Board, Respondent is not obligated to reinstate the strikers when the Board decisions hold contra.

*Reference to Intermediate Report.

Page 9, Lines 5-10*

47. To the entire finding and conclusion in this paragraph, since Bash's statement to Pottle contained an implied threat of reprisal in violation of Section 8(a)(1) and was not protected by Section 8(c).

Page 9, Lines 13-22*

48. To the entire finding and conclusion in this paragraph, since Bash's agreement with Pottle's statement as to the Respondent's intention to discriminate against members of the Union palpably established that Jones was discharged for Union activity even though Bash's acquiescence in her statement was not per se violative of the Act.

Page 9, Lines 13-22*

49. To the failure of the Trial Examiner to find or to discuss and credit the uncontroverted testimony of Lorraine Conger that Bash had telephoned her and informed her of Jones' discharge and had stated that "Jones and Risley, those two stinkers, had been engaged in too much union activity," and that "this A.C.A. outfit is nothing more than a bunch of Communists."

Page 9, Lines 13-22*

50. To the failure of the Trial Examiner to find or to discuss and credit the uncontroverted testimony of Virginia Kelso that Bash had telephoned her on the evening of January 22 and told

*Reference to Intermediate Report.

her that the Company wants the Union out of there and that they were starting "with guys like Chuck Jones and Bruce Risley and they are going on down the line."

Page 9, Lines 33-34*

51. To the third conclusion of law.

Page 9, Lines 38-40*

52. To the recommendation that the complaint be dismissed, since such recommendation is based on findings and conclusions which are contrary to the great weight of the evidence.

Respectfully submitted,

/s/ NATHAN R. BERKE,

Counsel for the General
Counsel.

Dated at San Francisco, California, this 10th day of December, 1949.

Acknowledged: Dec. 12, 1949.

*Reference to Intermediate Report.

United States of America

Before the National Labor Relations Board

Case No. 20-CA-193

In the Matter of

GLOBE WIRELESS, LTD.,

and

LORRAINE E. CONGER, LILLIE I. FRIEND,
PAUL GUERRERO, JOHN GYURCSIK,
ALBERT E. HINDE, CHARLES A. JONES,
VIRGINIA KELSO, VIOLET A. LEACH,
JESSE E. McLIN, HOMER E. MULLIGAN,
RUDOLPH W. NIEMI, MALCOM G.
PARKS, LOUIS PENA, SYLVIA POTTLE,
BRUCE E. RISLEY, GEORGE J. ROSEN-
GREN, DAVID E. SHEAFFER, PAULINE
SMITH, LESLIE T. WHEELER, VIOLA
H. WILLIAMS,

Individuals.

DECISION AND ORDER

On October 28, 1949, Trial Examiner Horace A. Ruckel issued his Intermediate Report in this case, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter all

parties filed exceptions to the Intermediate Report and supporting briefs. The charging parties requested oral argument. This request is hereby denied because the record, exceptions and briefs, in our opinion, adequately present the issues and positions of the parties.¹

The Board² has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby

¹After the issuance of the Intermediate Report the charging parties filed a motion to augment record, in which the General Counsel joined, for the purpose of introducing evidence that a request for reinstatement had been made on behalf of the charging parties. In its response to this motion the Respondent agreed to the inclusion of this evidence provided it is accepted solely to establish that a conditional request for reinstatement was made, but requested that, in any event, it be permitted to introduce evidence with respect to the replacement of the charging parties prior to their request for reinstatement. As we hereinafter find that the evidence offered by the charging parties establishes only a conditional request for reinstatement, there is no outstanding objection to the motion to augment the record. It is hereby granted and the evidence hereby made a part of the record in this case. In view of our findings hereinafter set forth, evidence as to the replacement of the charging parties prior to their request for reinstatement is irrelevant and the Respondent's request to introduce such evidence is hereby denied.

²Pursuant to the provisions of Section 3 (b) of the Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

affirmed.³ The Board has considered the Intermediate Report, the exceptions,⁴ and briefs, and the

³The Trial Examiner properly granted the General Counsel's motion to strike the following defenses: (a) that the charges are not filed by the charging individuals but were filed on their behalf by the American Communications Association, herein ACA, a noncomplying union; (b) that the ACA restrained and coerced nonmembers and had attempted to cause the Respondent to discriminate in favor of the ACA; (c) that no relief could be granted to effectuate the policies of the Act. The provisions of Section 9 (f), (g), and (h) impose no limitations of the filing of charges by individuals, and the fact that the noncomplying union may have assisted members in filing charges is immaterial. *Augusta Chemical Company*, 83 NLRB No. 7; see *Olin Industries, Inc.*, 86 NLRB No. 36. Neither noncompliance nor misconduct on the part of the ACA constitutes any defense to the charges here. See *Andrews Company*, 87 NLRB No. 62, and *Irwin-Lyons Lumber Company*, 87 NLRB No. 9. Evidence relating to these defenses was therefore properly excluded.

The Trial Examiner refused to exclude the complainants as witnesses in granting the Respondent's motion to sequester witnesses. Complainants are generally not excluded. *Biggs Antique Company, Inc.*, 80 NLRB 345, 348. The related motion to sever the charges was properly denied. See *N.L.R.B. v. Kinner Motors*, 152 F. 2d 816 (C.A. 9).

⁴We find no prejudicial error in the Regional Director's dismissal of the Respondent's application for taking depositions before a notary public of all of the 20 individuals who filed charges, and for subpoenas to require their attendance. The dismissal was without prejudice to make the subpoenas returnable at the hearing. See *Paul Uhlich & Co., Inc.*, 26 NLRB 679, 681.

entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, only to the extent that they are consistent herewith.

1. The complaint alleged that the Respondent violated Section 8 (a) (1) by threatening its employees with discharge or demotion as a penalty for activity on behalf of the ACA and by other similar acts and conduct. The Respondent contends that these allegations are not properly before us because the charges alleged violations of Section 8 (a) (1) and (3) by certain discharges, and did not contain any averment alleging the independent violations of Section 8 (a) (1) subsequently included in the complaint. We do not accept the Respondent's contention that a complaint issued under the amended Act is limited in scope by the averments contained in the charge filed to initiate the proceeding. On the contrary, we have held that "a complaint may lawfully enlarge upon a charge if such additional unfair labor practices were committed no longer than 6 months prior to the filing of such charge."⁵ The complaint herein lawfully enlarged upon the charge.⁶

The Trial Examiner, however, dismissed the allegation of 8 (a) (1) violations on the ground that the statements made were privileged under Section 8 (c). We do not agree.

⁵Cathey Lumber Company, 86 NLRB No. 30.

⁶Biggs Antique Company, Inc., 80 NLRB 345, 348.

The Trial Examiner found that Bash told Pottle the Respondent “had ‘to get rid of the Communists,’ that the ACA would never come back into the plant, and that if Pottle was wise she would get out of the ACA ‘while the getting was good.’ ” We agree with the Trial Examiner’s implicit holding that Bash was privileged to label the ACA leaders and members as “Communists.”⁷ But we cannot agree that Bash’s further statements were not violative of the Act. In context, his statement that the ACA would never come back clearly implied that the Respondent would resort to any measure necessary to rid itself of that union.⁸ His admonition to get out while the getting was good was an unequivocal warning that the Employer intended to discriminate against ACA members,⁹ combined with an assurance that if Pottle left the union her position would be safe.¹⁰ We also consider in this category the other statements of Bash, to Conger and Sheaffer and others, that “if you are going to tie yourselves to the tail of this Communist kite, you can sink with it.” That statement

⁷Morristown Knitting Mills, Inc., 86 NLRB No. 46; see El Paso-Ysleta Bus Line, Inc., 85 NLRB No. 193.

⁸See Crosby Chemicals, Inc., 85 NLRB No. 139; J. S. Abercombie Company, 83 NLRB No. 85.

⁹Dixie Mercerizing Company, 86 NLRB No. 37.

¹⁰The Red Rock Company, 84 NLRB No. 65.

was a warning that the Respondent intended to oust the ACA and discharge its adherents.¹¹

The record, as the Trial Examiner indicated, reflects various other statements of this nature by Bash. We find likewise violative (a) Bash's warning to Conger that the ACA couldn't do her any good, in view of his counselling her to "remember that it's pretty nice to keep eating, you know"; (b) Bash's statement to Kelso that the Respondent wanted the Union out of its offices and that it was starting with "guys like Chuck Jones and Bruce Risley and * * * going down the line." Such a statement, under the circumstances, was a clear warning to Kelso to disavow the union or—as he had stated to other employees—"sink with it."

We find that the Respondent violated Section 8 (a) (1) by these statements.

2. The Trial Examiner found that the discharge of Charles Jones was for insubordination and did not violate Section 8 (a) (3) of the Act. We agree.¹² Jones admitted having flatly refused to perform certain tasks assigned him during his working time. The fact that he was active on behalf of the ACA, a union which the Respondent sought

¹¹Keith Furnace Company, 73 NLRB 754; N.L.R.B. v. C. D. Beck & Company, 157 F. 2d 514, 515 (C.A. 6), cert. den, 330 U. S. 838.

¹²The Trial Examiner made several inadvertent misstatements in his account of the Jones' episode. These mistakes were immaterial to his decision, and are to ours; we therefore find no need to enumerate them.

to eliminate, did not give him immunity for refusing to comply with such directions by management.¹³

3. Unlike the Trial Examiner, we find that the Respondent violated Section 8 (a) (3) and 8 (a) (1) when, on January 21 and 22, it discharged 16 of the complainants because they struck in protest¹⁴ against Jones' discharge.

The Trial Examiner correctly found that as the strike was in protest against a lawful discharge it was an economic strike, and the Respondent was free to replace such strikers at any time prior to their unconditional request for reinstatement. However, it does not follow from this that the Respondent was free to discharge the strikers before they had been replaced. Under the circumstances of this

¹³See *N.L.R.B. v. Ross Gear & Tool Company*, 158 F. 2d 607, 612-614 (C.A. 7). The direction in the instant case was not on its face so arbitrary as to warrant the inference that it was given in order to be violated. Cf. *The Russell Manufacturing Company, Incorporated*, 82 NLRB No. 136.

¹⁴The Trial Examiner found that the strikers demanded Jones' reinstatement, although the charging individuals testified that they had requested an opportunity to discuss it. However, it is immaterial whether the employees were withholding their services in order to force Jones' reinstatement or to secure a discussion of what they regarded as a grievance. Under either view the strike was a protected concerted activity. See *Kallaher and Mee, Inc.*, 87 NLRB No. 61; *Agar Packing & Provision Corporation*, 81 NLRB 1262.

case,¹⁵ the discharges violated Section 8 (a) (3) and 8 (a) (1) of the Act,¹⁶ unless there is merit to the Respondent's contentions that the strike was for an unlawful purpose or otherwise unprotected.

The Respondent contends that the strike contravened the Federal Communications Act of 1934 and was therefore illegal under the doctrine of the Southern Steamship Co. case.¹⁷ This contention is based on the assertion that any work stoppage

¹⁵The Trial Examiner found that Bash, in accordance with McPherson's instructions, gave the two groups the option of returning to work or striking and told them that they were discharged when they chose to strike. He also found that McPherson confirmed the first group discharge and then renewed the option. McPherson testified: "I told them that they should return to their jobs, if they didn't I had no alternative but to discharge them." He admitted discharging them when they refused to return to work. All of the charging individuals received "final pay checks" covering their salaries to the dates on which they were told that they were discharged. As the Respondent did not attempt to settle the strike or solicit the return of the strikers, we find no basis for concluding, as did the Trial Examiner, that "any or all of them could have had their jobs back at any time before they were filled by new employees." The record clearly establishes that the strikers were discharged before they had been replaced; therefore, evidence relating to their subsequent replacement is not material.

¹⁶Kallaher and Mee, Inc., 87 NLRB No. 61. and cases cited therein; cf. Kansas Milling Company, 86 NLRB No. 136, and cases cited therein.

¹⁷Southern Steamship Company v. Labor Board, 316 U. S. 31; The American News Company, Inc., 55 NLRB 1302.

would, in violation of Section 501 of that Act,¹⁸ cause the Respondent to breach its statutory duty to furnish service. We find no merit in this contention. The Act prohibits the licensee from voluntarily abandoning service without the approval of the Commission;¹⁹ it does not penalize the licensee whose failure to continue service is attributable to others, as in the case of a strike. The Act does require a licensee to serve without discrimination, i.e., "upon reasonable request";²⁰ but that duty is not breached if a strike prevents the licensee from serving anyone.

The Respondent also argues that the strikers are not protected because they violated nondiscriminatory company rules and their contract of employment by stopping work. The Respondent relies on a notice, posted on October 21, 1948,²¹ stating that

¹⁸47 U.S.C. "Sec. 501. Any person who wilfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful, or who wilfully and knowingly permits or fails to do any act, matter, or thing in this Act required to be done, or wilfully and knowingly causes or suffers such omission or failure, shall, upon conviction thereof, be punished * * *"

¹⁹47 U.S.C. Sec. 214.

²⁰47 U.S.C. Sec. 201.

²¹The Globe-ACA contract, which expired on August 15, 1948, contained a no-strike clause. Thereafter the Respondent refused to recognize the ACA because it had not complied with Section 9 (f). (g),

“the Company reserves the right to discharge, suspend, or otherwise discipline any employee it has reason to believe is failing to perform his work properly.” The Respondent enlarges the clear intentment of this provision, which we have already recognized in finding that Jones was discharged for cause, to prohibit its employees from protesting Jones’ discharge on the premises and during their working hours. We agree that the employees cannot “continue to work and remain at their positions, and at the same time select what part of their allotted tasks they cared to perform of their own volition.”²² However, these employees engaged in a complete work stoppage and were discharged because they chose to strike.

The Respondent further contends that the strike violated Section 8 (b) (2) in that its purpose was to compel the Respondent to discriminate in favor of Jones because of his activity in and on behalf of the ACA. The record is replete with evidence that the strikers believed that Jones had been discriminatorily discharged, because of his ACA membership and activities, and feared similar reprisals against themselves. Under these circumstances,

and (h) of the Act. The notice of October 21 repeated the Respondent’s position and contained the further statement that it rejected the terms of the expired contract. The terms of that contract are therefore not applicable here. See *Columbia Pictures Corporation, et al.*, 64 NLRB 490, 506.

²²N.L.R.B. v. *Montgomery Ward & Co.*, 157 F. 2d 486, 496 (C.A. 8).

there is no basis for the assertion that the strikers were seeking to compel the Respondent to give preference of employment to the active ACA members and adherents or to permit them to engage in insubordination merely because of their union membership.²³ Moreover, the Board has generally recognized that a strike to protest a nondiscriminatory discharge is protected concerted activity.²⁴

The Respondent also argues that the strikers were not protected because they engaged in a sit-down strike. The employees stood around Bash's desk for about an hour while they discussed Jones' discharge. They left immediately after they were discharged. They did not claim to hold the premises in defiance of the owner's right of possession. We do not regard their action as in the nature of a sit-down strike.²⁵

We therefore find no merit in the Respondent's several contentions that the strike was unprotected and conclude that the discharge of the strikers violated Section 8 (a) (3) and 8 (a) (1) of the Act.

4. We find that the Respondent also violated Section 8 (a) (3) and 8 (a) (1), when, on January

²³National Maritime Union, 78 NLRB 971, on which the Respondent relies, is therefore inapposite.

²⁴Kallaher and Mee, Inc., *supra*, and cases cited therein.

²⁵N.L.R.B. v. American Manufacturing Company, 106 F. 2d 61, 67-68 (C.A. 2), modified and affirmed 309 U. S. 629; cf. N.L.R.B. v. Condenser Corporation of America, 128 F. 2d 67, 77 (C.A. 3).

24, it discharged employees Guerrero, Wheeler, and Friend, because they aligned themselves with the strikers.

The Trial Examiner found that Bash fired Guerrero because he was justified in believing that Guerrero was feigning illness and that he was aligning himself with his fellow ACA members in going on strike. The Trial Examiner found that Bash discharged both Wheeler and Friend when it became clear to him that they chose to join the strike rather than work. The record supports these findings.

When Bash learned that Guerrero had been reported out because of illness, he telephoned Guerrero and told him to report for work anyway, because he was not going to stand for any union tricks.²⁶ Bash testified that he told Guerrero to get a doctor's certificate. Guerrero reported for work at his usual hour on January 24; Bash asked him if he had a doctor's certificate. Guerrero replied that he did not, and had never before had to have one for 1 day's absence due to illness.²⁷ Bash immediately discharged him. Bash testified significantly that he then told Guerrero, "I know you are going to make me reinstate Chuck Jones, now get down

²⁶Barlow was the secretary of the ACA. Bash admitted telling Guerrero that he "wouldn't stand for any Barlow tricks."

²⁷According to Bash, the general practice was to excuse absence caused by illness without medical certificates, but to pay sick leave only to those who presented certificates.

there on the bricks with the rest of them and make me do it.” We think it clear that Bash fired Guerrero because he thought Guerrero had joined the strike. The fact that he may have been mistaken does not render his discharge of Guerrero the less an unfair labor practice.²⁸

Wheeler and Friend were with Guerrero when he was fired. Bash then told Wheeler he was discharged because he had not shown up for work the night before.²⁹ Before Wheeler could explain, Bash told him to go outside with Guerrero and “try to make him reinstate Chuck Jones, Bruce Risley, and company.” Guerrero and Wheeler left. Bash then turned to Friend and told her to get to work. When she began to talk about the various discharges, Bash brusquely told her to “trot along then.”³⁰ She then joined Guerrero and Wheeler and all three went down to the picket line. The Respondent contends that it was entitled to put to the employees the choice of working or striking and that it did so.

²⁸N.L.R.B. v. Link-Belt Company, 311 U. S. 854, 859-860.

²⁹As we find that Bash unequivocally discharged Wheeler on January 24, we need not resolve the conflicting testimony concerning the import of Bash’s telephone call to Wheeler on January 23. It is apparent that Bash thought that Wheeler, as well as Guerrero, had absented himself from sympathy with the strikers.

³⁰As Friend received terminal notice along with the rest of the dischargees, we regard this statement of Bash tantamount to a discharge.

We agree. However, the same reasons which make the group discharges unlawful apply and make these discharges violative of Section 8 (a) (3) and 8 (a) (1).

The effect of the unfair labor practices upon commerce.

The activities of the Respondent, set forth above, occurring in connection with the operations of the Respondent, described in Section I of the Intermediate Report, have a close, intimate, and substantial relation to commerce and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

The Remedy

The discharge of employees because they engaged in concerted activity protected by Section 7 of the Act violates Section 8 (a) (1) of the Act. Because such discharge amounts to a discrimination in hire and tenure of employment, thereby discouraging membership in a labor organization,³¹ it also violates Section 8 (a) (3). Moreover, whether the discharges be regarded as a violation of Section 8 (a) (1) or of Section 8 (a) (3), we find that it is necessary to order reinstatement with back pay, as

³¹It is immaterial whether or not the rights were asserted through the organization to which the group members in fact belonged. *Augusta Chemical Company*, *supra*; *Gullett Gin Company, Inc.*, 83 NLRB No. 1, enforced 25 LRRM 2340 (C.A. 5); *Olin Industries, Inc.*, *supra*.

hereinafter provided, in order to effectuate the policies of the Act.³²

We are convinced on the record as a whole that the unfair labor practices committed by the Respondent are potentially related to other unfair labor practices prescribed and that danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. In order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, we shall, accordingly, order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.³³

It is our practice to award employees who are discriminatorily discharged while on strike back pay from the date when they unconditionally requested reinstatement rather than from the date of their discriminatory discharges, on the theory that the loss of wages cannot conclusively be attributed to the discharge until the employees have indicated their willingness to abandon the economic strike.³⁴ From the evidence which is now before us³⁵ it appears that on March 2, 1949, the discharges requested reinstatement. That request,

³²Sandy Hill Iron & Brass Works, 55 NLRB 1; and see footnote 3 *supra*.

³³May Department Stores v. N.L.R.B., 326 U. S. 376.

³⁴Massey Gin and Machine Works, 78 NLRB 189; Kallaher and Mee, Inc., *supra*.

³⁵See footnote 1, *supra*.

however, was for the reinstatement of all the charging parties, including Charles Jones. The Respondent refused to make a group reinstatement and regarded the request as conditional upon the reinstatement of Charles Jones. We conclude that no unconditional request for reinstatement had been made, indicating the charging parties' willingness to abandon the strike.³⁶ As the record does not enable us to determine whether the strike has been otherwise abandoned, we shall order back pay only from the date of such abandonment to the date on which the Respondent offers reinstatement to the employees named in Appendix A.

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the Board hereby orders that the Respondent Globe Wireless, Ltd., San Francisco, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in labor organizations of its employees by discharging or refusing to reinstate or in any other manner discriminating against them in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise

³⁶See *Wilson & Co., Inc.*, 77 NLRB 959, 962, 981, footnote 37.

of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the employees named in Appendix A, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions,³⁷ and make them whole³⁸ for any loss of wages suffered as a result of the discrimination against them, in the matter described in the section above entitled *The Remedy*;

(b) Post immediately at its office and place of business in San Francisco, California, copies of

³⁷In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico*, Branch, 65 NLRB 827.

³⁸See *Crossett Lumber Company*, 8 NLRB 440; *E. R. Haffelfinger Company, Inc.*, NLRB 760.

the notice attached hereto and marked Appendix A.³⁹ Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the date of receipt of this Order what steps Respondent has taken to comply herewith.

It Is Further Ordered that the complaint, insofar as it alleges other violations of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 20th day of March, 1950.

PAUL M. HERZOG,
Chairman.

JOHN M. HOUSTON,
Member.

ABE MURDOCK,
Member.

[Seal] NATIONAL LABOR
RELATIONS BOARD.

³⁹In the event that this Order is enforced by a decree of a Court of Appeals, there shall be inserted before the words, "A Decision and Order," the words, "A Decree of the United States Court of Appeals Enforcing."

Appendix A

Notice to All Employees
Pursuant to
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the amended Act.

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a

result of the discrimination against them, as set forth in the Decision and Order:

Albert E. Hinde	George J. Rosengren
Virginia Kelso	David E. Sheaffër
Violet A. Leach	Pauline Smith
Jesse E. McLin	Leslie T. Wheeler
Homer E. Mulligan	Lorraine E. Conger
Rudolph W. Niemi	Lillie I. Friend
Malcolm G. Parks	Paul Guerrero
Louis Pena	John Gyuresik
Sylvia Pottle	Viola H. Williams
Bruce E. Risley	

All our employees are free to become or remain members of the above-named union or any other labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

GLOBE WIRELESS, LTD.,
(Employer)

By,
(Representative) (Title)

Dated

This notice must remain posted for 60 days from

the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board
Twentieth Region

Case No. 20-CA-193

In the Matter of

GLOBE WIRELESS, LTD.,

and

LORRAINE E. CONGER, PAUL GUERRERO,
LILLIE I. FRIEND, JOHN GYURCSIK,
ALBERT E. HINDE, CHARLES A. JONES,
VIRGINIA KELSO, VIOLET A. LEACH,
JESSE E. McLIN, HOMER E. MULLIGAN,
RUDOLPH W. NIEMI, MALCOLM G.
PARKS, LOUIS PENA, SYLVIA POTTLE,
BRUCE B. RISLEY, GEORGE J. ROSEN-
GREN, DAVID E. SHEAFFER, PAULINE
SMITH, LESLIE T. WHEELER, VIOLA
H. WILLIAMS

Tuesday, July 26, 1949

Pursuant to notice, the above-entitled matter
came on for hearing at 10:00 o'clock a.m.

Before: Horace A. Ruckel, Esq.,

Trial Examiner.

Appearances:

NATHAN R. BERKE,

821 Market Street,

San Francisco, California,

General Counsel, National Labor
Relations Board.

BROBECK, PHLEGER & HARRISON, by
RICHARD ERNST,

111 Sutter Street,

San Francisco, California,

Appearing on Behalf of Globe Wire-
less, Ltd., the Respondent.

PROCEEDINGS

* * *

We therefore move that the Trial Examiner continue this hearing and that the issues of subpoenas, in accordance with this application which I hand the Trial Examiner, will require the attendance of each of the persons who are named in the title of the case. [11*]

* * *

Now, the Act says in Section 11 in very clear, simple language, that subpoenas shall be issued as follows:

“The Board or any member thereof shall upon application of any party to such proceedings forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceedings or

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

investigation requested in such application.”

The rules of the Board provide that the Regional Director shall act for the Board prior to the commencement of hearing, and the Trial Examiner, once the hearing has been commenced.

We filed timely a proper application with the Regional Director, but he failed to perform his duty in accordance with the requirements of the law. We have called this to your attention and feel that you are the only person who can cure it and we ask you to cure it by issuing the depositions called for and [12] continuing the hearing to permit them to be complied with and we do have the opportunity for discovery, as permitted by the Federal Rules of Procedure and the State Rules in virtually every State in the United States. [13]

* * *

Trial Examiner Ruckel: I know of no precedent for the granting of counsel's motion. The Trial Examiner does issue subpoenas but he issues them during the course of the hearing. [14]

* * *

As far as opportunity to confer with the witnesses is concerned, I know of no such precedent. The Respondent is entitled, as any defendant is entitled, to know what he is charged with. He is not entitled to know the exact nature of the evidence which the Government or the Complainant in a civil cause brings.

* * *

Further reading of the Complaint convinces me or shows plainly that there are no declarations or acts of supervisory employees which are relied upon as constituting a breach of the Act, with the exception that, of course, some individual, supposed to be a supervisor or officer, did discharge certain individuals. The Respondent's Answer makes it clear that they were discharged. [15]

Now, it is fully within the Respondent's knowledge who that individual was and the reasons why in their opinion they were discharged, the reason why in its opinion, that is, the Corporation's, they were discharged, and the Answer fully rationalizes the discharges.

* * *

Mr. Ernst: And is the application for the subpoenas denied? I don't want to burden you or the record, but I think that the amendments of 1947 have the effect of giving parties such as Globe Wireless the same right as the Board to require the production and opportunity to consider evidence and gain knowledge as to what evidence was to be produced. The Board claims apparently the right to compel the production of evidence prior to the commencement of the formal hearing. If the Board has that right, I submit, under this statute we have exactly the same right and that is given by the statute and we [16] being deprived of the right given us by the statute, and I see no way of preventing a mistrial of the case and either requiring a new trial, which doesn't make much

sense, or depriving the Board of any jurisdiction to decide in favor of the individual complainants, unless we prevent a mistrial at this stage in accordance with the motion I have made today.

* * *

Trial Examiner Ruckel: Well, on that representation I shall deny the application with the understanding that if it should appear that someone of these persons is not present and his testimony is desired by the Respondent, as the Respondent's own witness, that I shall entertain a motion or an application for subpoena at that time. [17]

* * *

Mr. Ernst: I have objection to 4.

Trial Examiner Ruckel: What is 4?

Mr. Ernst: It is the Complaint and Notice of Hearing, on the ground that there has been no showing and we contend that there can be no showing that any Complaint has lawfully [21] issued.

* * *

Trial Examiner Ruckel: The objection is overruled, and the Exhibits, including No. 4, may be received.

(The documents heretofore marked General Counsel's Exhibits Nos. 1(a) to (t), inclusive; 2(a) to (y), inclusive; 3(a) to (t), inclusive; 4(a), (b), (c) and (d), 5(a), (b), (c) and (d), 6, 7, and 8, for identification, were received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 5(a)

Case No. 20-CA-193

[Title of Board and Cause.]

APPLICATION FOR THE TAKING
OF DEPOSITION

Globe Wireless, Ltd., a party to the above-entitled proceeding, proposes that depositions shall be taken. It is proposed that such depositions be taken before Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, in the offices of Messrs. Brobeck, Phleger & Harrison, attorneys for Globe Wireless, Ltd., at Room 1100, 111 Sutter Street, San Francisco, California, beginning at 9:30 a.m., July 21, 1949, and that each of the following witnesses there testify by deposition upon oral examination at the time set forth after his name:

Albert E. Hinde,	9:30 a.m., July 21
2841 Sacramento Street,	
San Francisco, California.	

Charles Jones,	10:30 a.m., July 21
204 Park Street,	
Redwood City, California.	

Rudolph W. Niemi,	2:00 p.m., July 21
147 Arch Street,	
San Francisco, California.	

Malcolm G. Parks,	3:00 p.m., July 21
1840 Sunnydale Avenue,	
San Francisco, California.	

Bruce B. Risley,
House 598,
Marin City, California.

4:00 p.m., July 21

Globe Wireless, Ltd., sets forth the following reasons for the taking of these depositions:

1. The witnesses are all adverse parties to Globe Wireless, Ltd. in the above-entitled proceeding and the answer to the complaint in such proceeding has been served and filed.

2. Globe Wireless, Ltd. desires to take the deposition of these adverse parties for the purpose of discovery and for the use as evidence in the proceeding before the Board in accordance with the practice under Rule 26 of the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934.

3. Employees of the Board under the general supervision of the General Counsel of the Board and the Regional Director for the Twentieth Region have taken statements from supervisory employees of the company having the principal information with respect to the matters at issue in the proceeding and, we are informed and believe, have taken statements from some or all of the other parties. Such statements are, under the usual practice of the attorneys on the staff of the General Counsel of the Board, made use of by such attorneys in preparation for and in the course of the trial of the proceeding under Section 10.

4. The depositions will furthermore give counsel for Globe Wireless, Ltd., with respect to the witnesses whose depositions are asked, equal treatment to that accorded to attorneys for the General Counsel of the Board in view of the availability to them of statements taken from supervisory employees of Globe Wireless, Ltd. and from other persons who might have testimony relevant to the issues of the dispute.

5. A party to a proceeding before a District Court of the United States or a state court in the State of California would, as a matter of right, be entitled to take the depositions called for in this application.

6. Provisions of Section 11 authorize the taking of these depositions and provide for the issuance of subpoenas in connection therewith (See Legislative History of the Labor Management Relations Act, 1947, pages 16, 201, 334 and 562).

7. The depositions should contribute to a more expeditious and orderly trial of the matter before the Trial Examiner, just as does the comparable practice so contribute to expeditious and orderly trial of proceedings before the state and federal courts.

8. The application for subpoenas directed to the persons named herein to testify by deposition, which is filed this day with the Board's Office for the Twentieth Region, states, with full particularity, the nature of the testimony sought and shows why it relates

to the matters before the Board in the above-entitled proceeding.

Dated: July 13, 1949.

Respectfully submitted,

GLOBE WIRELESS, LTD.,

By /s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHLEGER &
HARRISON,

Its Attorneys.

Service admitted.

Received July 26, 1949.

GENERAL COUNSEL'S EXHIBIT No. 5(b)

Case No. 20-CA-193

[Title of Board and Cause.]

APPLICATION FOR THE TAKING
OF DEPOSITION

Globe Wireless, Ltd., a party to the above-entitled proceeding, proposes that depositions shall be taken. It is proposed that such depositions be taken before Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, in the offices of Messrs. Brobeck, Phleger & Harrison, attorneys for Globe Wireless, Ltd., at Room 1100, 111 Sutter Street, San Francisco, California, beginning at 9:00 a.m., July 22, 1949, and that each of the following

witnesses there testify by deposition upon oral examination at the time set forth after his name:

Lorraine E. Conger, 9:00 a.m., July 22, 1949
1941 Taraval Street,
San Francisco, California.

Lillie I. Friend, 10:00 a.m., July 22, 1949
1299 O'Farrell Street,
San Francisco, California.

Paul J. Guerrero, 11:00 a.m., July 22, 1949
1315 Grove Street,
San Francisco, California.

John Gyuresik, 1:30 p.m., July 22, 1949
359 Vallejo Street,
San Francisco, California.

Virginia Kelso, 2:30 p.m., July 22, 1949
529 Masonic Avenue,
San Francisco, California.

Violet A. Leach, 3:30 p.m., July 22, 1949
221 Clipper Street,
San Francisco, California.

Jesse E. McLin, 4:30 p.m. July 22, 1949
107 East Vista Avenue,
Daly City, California.

Homer E. Mulligan, 9:00 a.m., July 23, 1949
166 Gaven Street,
San Francisco, California.

Louis Pena, 10:00 a.m., July 23, 1949
227 Dore Street,
San Francisco, California.

Sylvia Pottle 11:00 a.m., July 23, 1949
2419 Durant Avenue,
Berkeley, California.

George J. Rosengren, 9:00 a.m., July 25, 1949
4220 Cabrillo Street,
San Francisco, California.

David E. Sheaffer, 10:00 a.m., July 25, 1949
1475 Guerrero Street,
San Francisco, California.

Pauline G. Smith, 11:00 a.m., July 25, 1949
26 Leona Terrace,
San Francisco, California.

Leslie T. Wheeler, 1:30 p.m., July 25, 1949
2763 Bush Street,
San Francisco, California.

Viola M. Williams, 2:30 p.m., July 25, 1949
24 Leona Terrace,
San Francisco, California.

Globe Wireless, Ltd., sets forth the following reasons for the taking of these depositions:

1. The witnesses are all adverse parties to Globe Wireless, Ltd. in the above-entitled proceeding and the answer to the complaint in such proceeding has been served and filed.

2. Globe Wireless, Ltd. desires to take the deposition of these adverse parties for the purpose of discovery and for the use as evidence in the proceeding before the Board in accordance with the practice under Rule 26 of the Rules of Civil Pro-

cedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934.

3. Employees of the Board under the general supervision of the General Counsel of the Board and the Regional Director for the Twentieth Region have taken statements from supervisory employees of the company having the principal information with respect to the matters at issue in the proceeding and, we are informed and believe, have taken statements from some or all of the other parties. Such statements are, under the usual practice of the attorneys on the staff of the General Counsel of the Board, made use of by such attorneys in preparation for and in the course of the trial of the proceeding under Section 10.

4. The depositions will furthermore give counsel for Globe Wireless, Ltd., with respect to the witnesses whose depositions are asked, equal treatment to that accorded to attorneys for the General Counsel of the Board in view of the availability to them of statements taken from supervisory employees of Globe Wireless, Ltd., and from other persons who might have testimony relevant to the issues of the dispute.

5. A party to a proceeding before a District Court of the United States or a state court in the State of California would, as a matter of right, be entitled to take the depositions called for in this application.

6. Provisions of Section 11 authorize the taking of these depositions and provide for the issuance of subpoenas in connection therewith (See Legislative History of the Labor-Management Relations Act, 1947, pages 16, 201, 334, and 562).

7. The taking of the depositions will contribute to a more expeditious and orderly trial of the matter before the Trial Examiner just as does the comparable practice so contribute to expeditious and orderly trial before the state and federal courts. The taking of the depositions will give counsel for Globe Wireless, Ltd., full knowledge of the evidence that may be available and will permit him to judge whether there may be any cumulative evidence and will otherwise permit him to prepare adequately for the trial in accordance with the usual practice of preparing for trial in the federal and state courts. Since a trial before the Board should be an attempt to present the true facts rather than a battle of wits between counsel, these depositions should be ordered and the subpoenas issued.

8. The application for subpoenas directed to the persons named herein to testify by deposition, which is filed this day with the Board's Office for the Twentieth Region, states, with full particularity, the nature of the testimony sought and shows why it relates to the matters before the Board in the above-entitled proceeding.

Dated: July 14, 1949.

Respectfully submitted,

GLOBE WIRELESS, LTD.,

By /s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,
BROBECK, PHLEGER &
HARRISON,

Its Attorneys.

Service admitted.

Received July 26, 1949.

GENERAL COUNSEL'S EXHIBIT No. 5(c)

Case No. 20-CA-193

[Title of Board and Cause.]

APPLICATION FOR SUBPOENA

Globe Wireless, Ltd., a party to the above-entitled proceeding, hereby applies for the issuance of subpoenas to the persons named below, each of whom is a party to the above-entitled proceeding and a party adverse to applicant, such subpoenas to direct them to appear before Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, at Room 1100, 111 Sutter Street, San Francisco, California, in the offices of Messrs. Brobeck, Phleger & Harrison, beginning at 9:30 a.m., July 21, 1949, as follows:

Albert E. Hinde, 9:30 a.m., July 21, 1949
2841 Sacramento Street,
San Francisco, California.

Charles A. Jones, 10:30 a.m., July 21, 1949
204 Park Street,
Redwood City, California.

Rudolph W. Niemi, 2:00 p.m., July 21, 1949
147 Arch Street,
San Francisco, California.

Malcolm G. Parks, 3:00 p.m., July 21, 1949
1840 Sunnydale Avenue,
San Francisco, California.

Bruce B. Risley, 4:00 p.m., July 21, 1949
House 598,
Marin City, California.

each of said witnesses at the time set forth after his name there to give testimony by deposition upon oral examination for the purpose of discovery and for use as evidence in the proceeding before the Board. The testimony to be produced shall be the information in the possession of the witness with respect to:

1. The reasons for the discharge of Charles A. Jones, on or about January 21, 1949.

2. The occurrences on January 21 and 22, 1949, in Globe's operating room and/or in the office of Mr. McPherson in connection with the discharge of Mr. Jones and any and all discussions, conferences, meetings and actions in connection therewith.

3. The acts of the witness and others, individually or in concert with others, during the period beginning January 21, 1949 and ending with the withdrawal of the picket line in connection with the picketing of Globe Wireless, Ltd.

4. The efforts of the witness, individually and/or in concert with others, on behalf of himself, or him-

self and others, to obtain his or their return to work at Globe Wireless, Ltd. after January 21, 1949.

5. The nature and extent and techniques of planning and effecting concerted action with his fellows directed against Globe Wireless, Ltd., during the period following knowledge of the discharge of Charles A. Jones.

6. Any and all acts of Globe Wireless, Ltd., directly or through its agents, referred to in the charge bearing the name of the witness as having interfered with, restrained or coerced the witness or other employees in the exercise of the rights to join and assist and bargain through American Communications Association, CIO.

7. Any and all acts of Globe Wireless, Ltd., directly or through its agents, referred to in the charge bearing the name of the witness as having by discrimination in regard to hire or tenure of employment or terms or condition of employment discouraged membership in American Communications Association, CIO, or encouraged membership in any other labor organization rival of American Communications Association, CIO.

8. Any acts, after August 25, 1948, of American Communications Association, CIO, or its agents, to restrain or coerce any employees of Globe Wireless, Ltd., in the exercise of their rights to refrain from joining, assisting or bargaining through American Communications Association, CIO.

9. Any acts after August 25, 1948 of American Communications Association, CIO, or its agents, to

cause or attempt to cause Globe Wireless, Ltd. to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage membership in American Communications Association, CIO, or discourage membership in any labor organization rival of American Communications Association, CIO.

10. Any act after January 21, 1949 of American Communications Association, CIO, or its agents, inducing or encouraging employees of any employer other than Globe Wireless, Ltd. to refuse to perform services with respect to messages originating on or carried by or destined to the radio telegraphy system of Globe Wireless, Ltd. where a purpose of such action was to force or require such other employer to cease dealing with Globe Wireless, Ltd.

11. The facts as to all acts of the witness and other individuals named in the complaint, individually and/or in concert with others, in connection with the planning, preparing and filing of the charge bearing the name of the witness and attached to the complaint.

Dated: July 13, 1949.

Respectfully submitted,

GLOBE WIRELESS, LTD.,

By /s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHLEGER &
HARRISON,

Its Attorneys.

Received July 26, 1949.

Service admitted.

GENERAL COUNSEL'S EXHIBIT No. 5(d)
Case No. 20-CA-193

[Title of Board and Cause.]

APPLICATION FOR SUBPOENA

Globe Wireless, Ltd., a party to the above-entitled proceeding, hereby applies for the issuance of subpoenas to the persons named below, each of whom is a party to the above-entitled proceeding and a party adverse to applicant, such subpoenas to direct them to appear before Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, at Room 1100, 111 Sutter Street, San Francisco, California, in the offices of Messrs. Brobeck, Phleger & Harrison, beginning at 9:00 a.m., July 22, 1949, as follows:

Lorraine E. Conger, 9:00 a.m., July 22, 1949
1941 Taraval Street,
San Francisco, California.

Lillie I. Friend, 10:00 a.m., July 22, 1949
1299 O'Farrell Street,
San Francisco, California.

Paul J. Guerrero, 11:00 a.m., July 22, 1949
1315 Grove Street,
San Francisco, California.

John Gyuresik, 1:30 p.m., July 22, 1949
359 Vallejo Street,
San Francisco, California.

Virginia Kelso, 2:30 p.m., July 22, 1949
529 Masonic Avenue,
San Francisco, California.

Violet A. Leach, 3:30 p.m., July 22, 1949
221 Clipper Street,
San Francisco, California.

Jesse E. McLin, 4:30 p.m., July 22, 1949
107 East Vista Avenue,
Daly City, California.

Homer E. Mulligan 9:00 a.m., July 23, 1949
166 Gaven Street,
San Francisco, California.

Louis Pena, 10:00 a.m., July 23, 1949
227 Dore Street,
San Francisco, California.

Sylvia Pottle, 11:00 a.m., July 23, 1949
2419 Durant Avenue,
Berkeley, California.

George J. Rosengren, 9:00 a.m., July 25, 1949
4220 Cabrillo Street,
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David E. Sheaffer, 10:00 a.m., July 25, 1949
1475 Guerrero Street,
San Francisco, California.

Pauline G. Smith, 11:00 a.m., July 25, 1949
26 Leona Terrace,
San Francisco, California.

Leslie T. Wheeler, 1:30 p.m., July 25, 1949
2763 Bush Street,
San Francisco, California.

Viola M. Williams, 2:30 p.m., July 25, 1949
24 Leona Terrace,
San Francisco, California.

each of said witnesses at the time set forth after his name there to give testimony by deposition upon oral examination for the purpose of discovery and for use as evidence in the proceeding before the Board. The testimony to be produced shall be the information in the possession of the witness with respect to:

1. The reasons for the discharge of Charles A. Jones on or about January 21, 1949.

2. The occurrences on January 21 and 22, 1949, in Globe's operating room and/or in the office of Mr. McPherson in connection with the discharge of Mr. Jones and any and all discussions, conferences, meetings and actions in connection therewith.

3. The acts of the witness and others, individually or in concert with others, during the period beginning January 21, 1949 and ending with the withdrawal of the picket line in connection with the picketing of Globe Wireless, Ltd.

4. The efforts of the witness, individually and/or in concert with others, on behalf of himself, or himself and others, to obtain his or their return to work at Globe Wireless, Ltd. after January 21, 1949.

5. The nature and extent and techniques of planning and effecting concerted action with his fellows directed against Globe Wireless, Ltd. during the period following knowledge of the discharge of Charles A. Jones.

6. Any and all acts of Globe Wireless, Ltd., directly or through its agents, referred to in the charge

bearing the name of the witness as having interfered with, restrained or coerced the witness or other employees in the exercise of the rights to join and assist and bargain through American Communications Association, CIO.

7. Any and all acts of Globe Wireless, Ltd., directly or through its agents, referred to in the charge bearing the name of the witness as having by discrimination in regard to hire or tenure of employment or term or condition of employment discouraged membership in American Communications Association, CIO, or encouraged membership in any other labor organization rival of American Communications Association, CIO.

8. Any acts, after August 25, 1948, of American Communications Association, CIO, or its agents, to restrain or coerce any employees of Globe Wireless, Ltd. in the exercise of their rights to refrain from joining, assisting or bargaining through American Communications Association, CIO.

9. Any acts after August 25, 1948, of American Communications Association, CIO, or its agents, to cause or attempt to cause Globe Wireless, Ltd. to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage membership in American Communications Association, CIO, or discourage membership in any labor organization rival of American Communications Association, CIO.

10. Any act after January 21, 1949, of American Communications Association, CIO, or its agents, in-

ducing or encouraging employees of any employer other than Globe Wireless, Ltd. to refuse to perform services with respect to messages originating on or carried by or destined to the radio telegraphy system of Globe Wireless, Ltd. where a purpose of such action was to force or require such other employer to cease dealing with Globe Wireless, Ltd.

11. The facts as to all acts of the witness and other individuals named in the complaint, individually and/or in concert with others, in connection with the planning, preparing and filing of the charge bearing the name of the witness and attached to the complaint.

Dated: July 14, 1949.

Respectfully submitted,

GLOBE WIRELESS, LTD.,

By /s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHLEGER &
HARRISON,

Its Attorneys.

Service admitted.

Received July 26, 1949.

GENERAL COUNSEL'S EXHIBIT No. 6

United States of America

Before the National Labor Relations Board

Twentieth Region

Case No 20-CA-193

In the Matter of

GLOBE WIRELESS, Ltd.

and

LORRAINE E. CONGER, LILLIE I. FRIEND,
PAUL GUERRERO, JOHN GYURCSIK,
ALBERT E. HINDE, CHARLES A. JONES,
VIRGINIA KELSO, VIOLET A. LEACH,
JESSE E. McLIN, HOMER E. MULLIGAN,
RUDOLPH W. NIEMI, MALCOM G.
PARKS, LOUIS PENA, SYLVIA POTTLE,
BRUCE B. RISLEY, GEORGE J. ROSEN-
GREN, DAVID E. SHEAFFER, PAULINE
SMITH, LESLIE T. WHEELER, VIOLA H.
WILLIAMS,

Individuals.

ORDER

Applications for the taking of depositions and applications for subpoenas in connection therewith having been filed by Globe Wireless, Ltd., on July 13 and 14, 1949, and the matters set forth therein having been duly considered,

It Is Hereby Ordered that, good cause for the

taking of depositions not having been shown, the applications therefor be, and the same hereby are, denied, and

It is Hereby Further Ordered that the applications for subpoenas, being in connection with and dependent upon the applications for depositions, be, and the same hereby are, likewise denied, without prejudice to the making of written applications for subpoenas returnable at the hearing heretofore scheduled in the above-entitled proceedings.

/s/ GERALD A. BROWN,
Regional Director, Twentieth Region, National
Labor Relations Board.

Received July 26, 1949.

GENERAL COUNSEL'S EXHIBIT No. 7

Western Union
[Telegram]

July 20, 1949.

Straight Wire
National Labor Relations Board,
Washington, D. C.

Re Globe Wireless Et Al. Case No. 20-CA-193.
We Hereby Request Under Section 102.26 of the Board's Rules and Regulations Special Permission to Appeal to the Board Directly from the Order of the Regional Director for the Twentieth Region Received July 19, 1949, Denying Issuance of Subpoenas, Issuance of Which Was Required by Sec-

tion 102.31 of the Board's Rules and Regulations and Section 11(1) of the Act, Due and Timely Application Having Been Made Therefor. Since Respondent Would be Irreparably Deprived of Its Right to Due Process of Law and to the Fair Hearing Required by Statute if the Taking of Evidence in the Hearing Precedes the Issuance and Compliance with Said Subpoenas for That Would Preclude Respondent from Preparing and Presenting the Case as He Is Entitled, We Further Request Order Continuing July 26 Hearing Until Board Considers Appeal, Issues Subpoenas and There Is Compliance Therewith. Copy of This Telegram Is Being Served on the Parties and the Regional Director for the Twentieth Region.

BROBECK, PHLEGER &
HARRISON.

Received July 26, 1949.

GENERAL COUNSEL'S EXHIBIT No. 8

[Teletype]

Book SF

July 21, 1949.

Washington 7-21-49 513PM

Re—Globe Wireless Et Al, 20-CA-193, the Board Upon Consideration Today Has Denied Without Prejudice Application Made for Special Permission to Appeal from Regional Director's Refusal to Issue Subpoenas. The Board Will Consider This Matter

Upon a Review of the Record if Raised for Its Consideration Pursuant to Section 203.46 of the Board's Rules and Regulations. The Board Also Denies Request for Order to Continue the Hearing for Same Reason.

NATIONAL LABOR
RELATIONS BOARD.

20-CA-193 203.46

GM524PM

Received July 26, 1949.

* * *

Mr. Ernst: I assume that would give us the opportunity to raise the question as to the lawful issuance of the Complaint at a later date?

Trial Examiner Ruckel: It may be raised in oral argument or by brief.

Mr. Ernst: Or by brief directed to the matter?

Trial Examiner Ruckel: Well, as to the "evidence" I am not so sure, that is the matter of the alleged non-compliance of the Union which is not the charging party in this case.

Mr. Ernst: I think that is a matter of fact that we will have to determine from the evidence.

Trial Examiner Ruckel: Well, if it is a matter of fact it is a matter of administrative fact which has been determined administratively by the General Counsel. The Trial Examiner does not propose to go into the question of whether the General [22] Counsel was correct on all of the evidence which he had, or which he might adduce

in issuing the Complaint. It is all an administrative matter. That has been consistently held by the Board ever since the Taft-Hartley.

* * *

Mr. Ernest: Then I move to dismiss the proceeding entirely on the ground that there is a refusal by the Examiner to permit any evidence to be considered as to whether or not the charges were filed by a non-complying Union. At least, that is what I understand your ruling to be.

Trial Examiner Ruckel: Is there objection to that motion?

Mr. Berke: Yes, there is, Mr. Trial Examiner, very definitely.

Trial Examiner Ruckel: The motion was denied.

Do you mean your position also to include the contention that the General Counsel, or that the General Counsel issued the Complaint without the compliance of this Union?

Mr. Ernst: That is the substance of my objection.

Trial Examiner Ruckel: Well, I will not let you go into the evidence as to whether or not it has complied with the Act in that respect. [23]

Mr. Ernst: Well, how about the evidence as to who actually filed these charges?

Trial Examiner Ruckel: Well, it is quite clear as to who actually filed these charges, they were filed by these individuals.

Mr. Ernst: I don't think it is clear at all, Mr. Examiner.

Trial Examiner Ruckel: Yes. You don't pro-

pose to go into the matter as to whether or not they if that is the substance—fronted for the Union.

Mr. Ernst: Yes. We cannot go into that, as I understand the ruling? [24]

* * *

Mr. Berke: I have no further formal exhibits, Mr. Trial Examiner.

At this time I move that the entire seventh defense, being Paragraphs 12 through 17, both inclusive, in the Respondent's Answer, and the 8th and 9th defenses, being Paragraphs 18 and 19, respectively, in Respondent's Answer, be stricken from the record, and from the Answer.

Trial Examiner Ruckel: Will you repeat again those paragraphs, please?

Mr. Berke: Yes, in the seventh defense, on Page 7 of the Answer, Paragraphs 12 through 17, both inclusive, and the 8th and 9th defenses on Page 9 of the Answer, being Paragraphs 18 and 19. They are irrelevant and immaterial and incompetent to the issues involved in this hearing. They are couched in the language of Section 8 (b). If they are intended to be charges they are improperly filed as such. I therefore move that they be stricken.

Mr. Ernst: Well, I don't understand at the moment what your position is as to the sixth defense [25]

Mr. Berke: I didn't say the sixth defense.

Mr. Ernst: I thought a moment ago, in response to the Trial Examiner's question, you said

you were going to move to strike the sixth defense. [26]

Mr. Berke: The seventh.

Mr. Ernst: What about the sixth? Is that okay?

Mr. Brotsky: In order to get that before the Trial Examiner, I will move that the sixth defense be stricken on the ground that it is irrelevant and immaterial as a matter of law, it does not constitute a defense to the present proceeding, is not the allegation of facts which are required by the Rules and Regulations of the Board to be stated in the answer, and, further, and finally, that the sixth defense is an administrative matter within the discretion of the Board, and not the subject of evidence to be introduced at this hearing.

Mr. Berke: And Counsel for the General Counsel joins in that motion.

Trial Examiner Ruckel: Well, as I have indicated, I am of the opinion that should be dismissed because it is a matter with which we are not concerned.

I take, of course, there is an objection to the motion?

Mr. Ernst: Yes.

Trial Examiner Ruckel: The objection is——

Mr. Ernst: I believe——

Trial Examiner Ruckel: The objection is overruled. The motion to strike is allowed.

Mr. Ernst: The motion to strike is what?

Trial Examiner Ruckel: Is allowed. [27] ..

Mr. Ernst: That as is as to the sixth, seventh, eighth and ninth defenses?

Trial Examiner Ruckel: That is correct.

Mr. Berke: May we go off the record?

Mr. Ernst: In other words, the Board is not going to go into the question of what relief is appropriate under the Act? It seems to me—well, I don't want to argue the points now.

Trial Examiner Ruckel: We won't go into that now. It was raised in the answer, it was not raised in the complaint.

* * *

Mr. Berke: Mr. Trial Examiner, in off the record discussion with Counsel for the Respondent we have agreed to a stipulation with respect to commerce, and Counsel for the Respondent will read the proposed stipulation.

Mr. Ernst: It is hereby stipulated by and between Globe Wireless, Ltd. (hereinafter called the "Company") and [28] the National Labor Relations Board for the purposes of this proceeding alone and without prejudice to any other proceedings to which the Company is or may be a party, as follows:

1. The Company is and has been at all times herein mentioned a corporation organized and existing under the laws of the State of Nevada.

2. The Company is engaged in the business of transmitting messages by radio between Havana, Cuba, New York, New York, San Francisco, California, Honolulu, T. H., Manila, P. I., Shanghai, China, and ships at sea.

3. During the calendar year 1948 the Company

collected in excess of \$50,000 for its services rendered in such transmission of messages.

4. The Company agrees that its operations affect the flow of commerce among various states and with foreign countries and is engaged in interstate commerce within the meaning of the Act.

Trial Examiner Ruckel: Within the meaning of the Act?

Mr. Ernst: Within the meaning of the Act.

Mr. Berke: That stipulation is agreeable to Counsel for the General Counsel, and in that connection I should also like to call the attention of the Trial Examiner to the fact that the Respondent in its answer, which is General Counsel's Exhibit 4, had admitted the allegations of paragraph one of the complaint in this hearing, which bears on the issue of [29] commerce.

Trial Examiner Ruckel: Are there any further stipulations or motions? If not, call the first witness for General Counsel.

Mr. Berke: Yes, there is further stipulation, which was agreed to in the off the record discussion between Counsel for the General Counsel and Counsel for the Respondent, that the American Communications Association, affiliated with the Congress of Industrial Organizations is a labor organization within the meaning of the Act.

Trial Examiner Ruckel: Is that agreed to?

Mr. Ernst: That is agreed to.

* * *

CHARLES A. JONES

a witness called by and on behalf of the General Counsel of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Mr. Ernst: Mr. Examiner, before the commencement of the examination of this witness, I would like to ask whether any of the people—I note there are about 14 other people in the room behind the bar—are some of the parties named on the charges and the complaint? If so, I should like to move that they be excluded from the hearing room during the [30] course of the examination of any one of the witnesses, all of the other prospective witnesses who are referred to in my application for subpoena and that the Attorney for the General Counsel and for the individuals said would be produced to testify.

* * *

The motion to exclude is denied as to the individuals named in the complaint. It is granted as to other individuals, as I have stated, if Counsel will call my attention to their presence.

* * *

Direct Examination

By Mr. Burke:

Q. Mr. Jones, were you ever employed by the Globe Wireless? A. Yes.

Q. When were you first employed by them? [36]

A. On February 22, 1947.

Q. And when were you last employed there?

(Testimony of Charles A. Jones.)

A. The last day that I worked was January 20, 1949.

Q. What was your position on January 20, 1949?

A. I was paid as a point to point radio operator but classified as a A.P.O.

Q. What does A.P.O. stand for?

A. Automatic printer operator.

Q. And does that indicate the type of machine that you operated? A. Yes.

Q. What watch or shift were you on on January 20th? A. Noon until eight p.m. [37]

* * *

Q. Now, when you went to work for Globe, were you a member of any union?

A. I was a member of the American Communications Association, CIO.

Q. And did you continue that membership while you were working for Globe? A. I did.

* * *

Q. (By Mr. Berke): Now, when you first went to work for Globe, was there a collective bargaining contract between Globe and ACA? [41]

A. There was.

Q. And do you know when that contract expired?

A. The last contract expired on August 15, 1948.

Q. And were you a member of any committee of that union while working for Globe?

A. I was a member of the Shop Committee, and served on the Grievance Committee.

(Testimony of Charles A. Jones.)

Q. Now, as a member of these various committees did you have occasion to meet with representatives of management? A. I did.

Q. And as a member of the Negotiating Committee did you meet with representatives of management in an effort to negotiate a new contract to replace the one that expired on August 15, 1948?

A. I did.

* * *

Q. After the contract had expired, were the employees represented by any committee in the shop? [42]

A. Yes. We were allowed to meet with them.

Q. Were you a member of that committee?

A. I was a member of the committee.

Trial Examiner Ruckel: Did the committee have a name?

The Witness: It was generally thought of as the Grievance Committee.

Q. (By Mr. Berke): And would you meet with management concerning grievances? A. Yes.

Q. Were you at times chairman of that committee?

A. On two different instances I was Acting Shop Chairman.

Q. Tell us whether or not you name ever appeared on any notices or bulletins that may have been posted in connection with your union concerted activities? A. Many of them.

Q. Now, who were some of the representatives of management that you met with from time to time?

(Testimony of Charles A. Jones.)

A. We met with Mr. McPherson.

Q. What is Mr. McPherson's capacity?

A. General Manager. Sometimes he would have Mr. Albertson.

Q. Who is Mr. Albertson?

A. I believe he was an engineer, radio engineer of some kind. Mr. McPherson also had with him at various times the manager from New York, whose name I don't recall. One of the [43] managers from the Far East was there on one occasion, Mr. Neil Brown.

Q. Who is Mr. Brown?

A. Mr. Brown is the superintendent, as far as I know.

* * *

Q. (By Mr. Berke): Well, taking the period from August 15, 1948, to January 20, 1949, who was your supervisor?

A. My supervisor was Mr. Bash.

Q. Is that Leo Bash? A. Leo Bash.

Q. What is his title? A. Chief operator.

Q. Was Mr. Bash ever present at any of these meetings you had with management?

A. Yes. I failed to mention his name. He was generally there, usually.

Q. Do you know whether or not Mr. Bash could hire and fire?

A. There was a time when I understood that he could hire and fire by his own words.

Q. Could he recommend hiring and firing? [44]

A. He could do that.

(Testimony of Charles A. Jones.)

Q. Could he suspend? A. He could.

Q. Could he transfer people from one job to another or one circuit to another?

A. He could. [45]

* * *

Q. Now, when did you first go to work on the noon to eight p.m. watch?

A. I went to work on the noon to eight p.m. watch on the week of January 16th or 17th, whatever the Monday was of that week.

Q. How did you happen to go to work on that watch?

A. On a bidding period, I wasn't able to bid a four p.m. to midnight watch. I didn't have enough seniority.

Q. So you bid, as I understand it, for this noon to eight p.m. watch? And obtained it, is that correct? A. Yes. [47]

* * *

Q. Will you tell us if, during the course of your employment, a question arose with respect to lay-offs of certain individuals and a short work week? Just answer "yes" or "no."

A. Yes, sir.

Q. When did that take place?

A. In the latter part of November or early December; I am not sure.

Q. Well, will you tell us what that was about?

Trial Examiner Ruckel: 1948?

The Witness: 1948.

A. Due to the waterfront strike, and the com-

(Testimony of Charles A. Jones.)

pany's claim of declining revenues, they wanted to lay off several people. In the contract which they had agreed to live up to, although they had not signed one, it stated that in the case of—— [48]

* * *

Q. (By Mr. Berke): Now, was there another occasion when you protested certain working conditions at Globe after this event you have just described? A. You mean as to grievances?

Q. Yes. A. Of individuals?

Q. Yes.

A. Yes, I acted as a representative for several people in trying to settle grievances with Bash.

Q. And who did you meet with on these occasions? [50]

* * *

A. After November 6th, at which time the company would no longer meet with our Grievance Committee, I attended a meeting in the office with Mr. McPherson, acting as a representative of Bruce Risley.

Q. Was Mr. Risley an employee of Globe?

A. He was.

Q. Doing the same type of work you were doing?

A. Approximately.

Q. Were there other special occasions after November 6th? A. There were.

Q. 1948?

A. There were several occasions where we met with Bash in the operating room to protest the violations.

(Testimony of Charles A. Jones.)

Q. Was there an occasion when you met with management with respect to—— [51]

* * *

A. I recall on December 24, 1948, when Pauline Smith told me of the violation in connection with holiday work and pay, in which we got into a discussion, but partly through my efforts were settled to Miss Smith's satisfaction.

* * *

Trial Examiner Ruckel: Where is the union's bulletin board?

The Witness: It was in the operating room, behind the Shanghai circuit.

Q. (By Mr. Berke): Was that bulletin board in the operating room all through the period that you were employed there? A. Yes.

Q. Was there any period when there was a question concerning that bulletin board?

A. The board was removed for a short period of time somewhere about August 15, 1948. I believe I was on my vacation [53] and when I returned it was still down.

Q. And this was after the contract between the ACA and Globe had expired, was it?

A. Yes, sir.

Q. Did you participate in any negotiations with management concerning that bulletin board?

A. I was a member of the Committee at at least one meeting trying to get the company to return the board.

(Testimony of Charles A. Jones.)

Q. And do you know when that meeting took place at which you were present?

A. No, I don't; after the contract——

Q. When did you come back from your vacation?

A. I would imagine about August 17th, I guess about the 17th or 18th of August, 1948.

Q. And how long after you returned from your vacation did you take part in this meeting?

A. I would say within a week.

Q. So that it would be about the 24th or 25th of August, would it? Somewhere in there.

Q. 1948? A. Yes, sir.

Q. Who did you meet with on that occasion?

A. I remember that Mr. McPherson was there. I don't recall any others. [54]

Q. Was Mr. Bash there to your knowledge?

A. I couldn't say.

Q. In any event, as a result of the meeting, tell us whether or not the board was restored?

A. The company agreed to return the board to its place on the wall along with some bulletins that had also been removed along with it.

* * *

Q. What happened on January 19th?

A. I came to work at noontime, and at some period between noon and two o'clock I made a lunch relief on the Honolulu circuit. [55]

* * *

Q. All right, go ahead and tell us what occurred after this lunch relief?

(Testimony of Charles A. Jones.)

A. After the lunch relief on Honolulu I returned to Shanghai circuit, which was the usual thing, and at some time between then and 4:00 o'clock Bash came back to the circuit with the copies of three messages that I had punched to Honolulu and pointed out to me that I was using the wrong form, and showed me a copy of the correct Globe Form, and I told him that I had been using this form on international circuits for years, but that if Globe wanted it done differently I could change my form, comply. [56]

* * *

Q. What happened then on January 20th, the next day?

A. On January the 20th I came to work as usual at noon, and I don't remember where I was assigned, there was no regular schedule to follow, often times the Supervisor would tell me to help around the place, I might sit down at Manila for a while, I might be a clerk, that is office manager, or someone. New York might ask me to relieve them for lunch, the New York [58] operator. But along about, oh, I guess somewhere around 2:00 o'clock in the afternoon I had occasion to go back to ask Mr. Bash if I could see this bulletin once more, there was some little thing about the form that I still was not too sure of, and he got the form out and showed it to me. While I was back there talking to him I remarked to him that under the

(Testimony of Charles A. Jones.)

circumstances I suspected that they were going to pick my work to pieces, but that I didn't intend to take it.

Q. What did you mean by "under the circumstances"?

Mr. Ernst: Well, now, wait a minute. I object to——

Trial Examiner Ruckel: Objection sustained.

This conversation was with Mr. Bash?

The Witness: Yes.

Trial Examiner Ruckel: Give us the whole conversation. How did you happen to go to him? Oh, you went to him about this form?

The Witness: I went to check on the form.

Trial Examiner Ruckel: Right. How did you get into the question of your work?

The Witness: Under the tension and unfriendliness of this particular shift in the office I felt that——

Trial Examiner Ruckel: Which particular shift now do you mean?

The Witness: The noon to 8:00 shift.

Trial Examiner Ruckel: By the "unfriendliness of the [59] shift" you mean the unfriendliness of whom?

The Witness: At the office, the unfriendliness of the other people in there. There was only one union member, ACA Union member on that shift.

* * *

Trial Examiner Ruckel: Well, tell us about the other persons on the shift.

(Testimony of Charles A. Jones.)

The Witness: Well, there were two other ACA members on the shift, and the other were anti-ACA, or anti-Union.

Trial Examiner Ruckel: How many were on the shift?

The Witness: There were six or eight. [60]

Trial Examiner Ruckel: Operators?

The Witness: And clerks.

Trial Examiner Ruckel: And clerks.

Q. (By Mr. Berke): All right, proceed with the conversation that you had with Mr. Bash.

A. I said to Mr. Bash, "I suspect that you are going to pick my work to pieces, that you are going to find every little——"

Trial Examiner Ruckel: Before we get into that I want to be sure that there was not something else said before you made that remark. You asked him about this form, you asked to see that form that was posted because you were not certain that you were using the right form; is that correct?

The Witness: That is correct.

Trial Examiner Ruckel: Or using it exactly correctly. And will you tell us the conversation about that, about the form.

The Witness: I simply asked him to show me the bulletin that he had showed me the previous day, that I wanted to check with one little——

Trial Examiner Ruckel: So he showed it to you?

The Witness: He showed it to me.

Trial Examiner Ruckel: And then did you say anything further about the form, or did he?

(Testimony of Charles A. Jones.)

The Witness: No, nothing more was said about the form.

Trial Examiner Ruckel: Nothing said by you or by him as to whether you were using the form properly, or any comment at [61] all about the form?

The Witness: No.

Trial Examiner Ruckel: And the next thing that was said was when you made the remark which you have just told us about, is that it?

The Witness: That is right.

Q. (By Mr. Berke): Did you say anything more in addition to the remark about your work being picked to pieces? Give us that conversation.

A. I said, "I realize you are going to look for every little flaw in my work, you are going to pick it to pieces, and I am not going to take it." [62]

* * *

Q. Did anything more happen that day?

A. Shortly after that Bash came up to the circuit and said something about the form, or had some papers in his hand, and I called to his attention that this—that these three messages had been handed to him by a fink, Bruce, a woman, that it had always been my idea as an operator that if someone made a mistake they would show it to the person or tell him about it, and not run to the boss.

Q. That is what you told Bash?

A. That is what I told Bash.

Trial Examiner Ruckel: Didn't he say something to you before you told him that when he came up with these forms, these copies?

(Testimony of Charles A. Jones.)

The Witness: I don't recall just how he opened the conversation, but he replied by saying "You would call a woman a 'fink' but you wouldn't dare call a man a 'fink.' If you called me that I would answer that with violence."

This was in a bellicose voice, and he had a roar as usual. I said to him, "You have been referring to me as a Communist, and if you call me that I will attempt to answer that with violence."

He says, "I don't say that you are a Communist, I say that you are a fellow traveler."

I said, "I don't know what you mean by that," and he [63] walked away.

Q. (By Mr. Berke): Now, who was this person, "Bruce" that you referred to in your conversation with Mr. Bash?

A. Bruce is an APO operator, she has been there for some time longer than I have.

Q. Was she a member of the ACA?

A. She had been a member of the ACA.

Q. Was she a member then? A. No.

Q. Do you know whether or not she was a member of any other labor organization?

A. I don't know for sure about that, but she served as an observer during the Labor Board election held——

Q. For what Union? A. For the IBEW.

Q. Do you know when that Labor Board election was held?

A. It was held in the latter part of September.

(Testimony of Charles A. Jones.)

Q. What year? A. 1948.

Q. Was that after the contract between the ACA and the Company had expired? A. Yes. [64]

* * *

Q. Did anything more happen that day, that is, January 20, 1949?

A. While I was on my lunch period between 4:00 and 4:30 Mr. Bash came to the rest room and called me aside, and said, "Your work is not satisfactory."

I said, "Is that in quality or quantity?"

He said, "Quantity."

He says, "I want you to speed up in your punching, I want you to punch faster."

He says, "I want you to go over on Shanghai at 4:30 and during your idle moments I want you to practice punching this machine."

I said to Leo, "Well, that is an insult, and I will have to accept it as such."

He says, "Are you going to do it," or previous to this I had said, "Well, I am punching my fastest, and in keeping with the standard of work that I turn out I couldn't very well send any faster."

He says, "Well, are you going to practice?"

I said, "No." [67]

* * *

Q. Did you report for work the next day, January 21st?

A. I reported for work, I was a few moments late, I think about 12:08 or 12:10.

(Testimony of Charles A. Jones.)

Q. Did you go to work that day? A. No.

Q. What happened?

A. Well, I went to the card rack where our time cards were kept, near the time clock, and my card was missing from its regular place, so I went over to Leo and asked him if he had my card, and he said "No, you won't need a card." I was surprised. He said, "I want you to come on inside with me."

Q. Where was "inside"?

A. Into Mr. McPherson's office, or Mr. Brown's. I didn't know where we were going. "Inside" was the way he said.

Q. Did you go right in with him?

A. Before going in I wanted to take a representative, so I [69] said to Bash, "Just a moment until I get a representative. I will ask Niemi to go in with me."

Q. What is Mr. Niemi's first name?

A. Rudolph.

Q. Is that spelled N-i-e-m-i?

A. That is correct.

Q. What happened when you asked to take him with you?

A. He said, "You won't need Niemi for what you are going to hear."

I said, "Well, I am entitled to a representative and if I don't get one I won't be going inside."

Trial Examiner Ruckel: What was the basis for your statement that you were entitled to a representative?

(Testimony of Charles A. Jones.)

The Witness: The law.

Trial Examiner Ruckel: I beg your pardon?

The Witness: The law.

Trial Examiner Ruckel: You weren't referring to anything in Company practice or previous position of contract which they subsequently——

The Witness: No, the labor law. We had previously been questioned about our right to have a representative, and after they had legal advice they agreed that we were entitled, a man or a woman was entitled to one representative.

Q. (By Mr. Berke): That is, the Company had previously agreed to that? [70]

A. They had.

Trial Examiner Ruckel: When was that?

The Witness: When was that? Well, it was after the—it was after November the 6th, at which time the Company wouldn't meet with the whole committee.

Trial Examiner Ruckel: You say it was agreed that although they would not meet with the whole committee, that one, in the event of a lay-off, would be entitled to be represented by someone else to discuss with the Company, is that what you are trying to tell us?

The Witness: Yes, on any grievance.

Trial Examiner Ruckel: Any grievance.

Q. (By Mr. Berke): Any grievance?

A. Any grievance. No one had to go in there by themselves.

(Testimony of Charles A. Jones.)

Trial Examiner Ruckel: And that was carried out?

The Witness: It was carried out after the Company satisfied themselves it was the law.

Q. (By Mr. Berke): All right. Now, on this day, January——

Mr. Ernst: Now, wait a minute. I suggest either that the reference to “After the Company had satisfied itself as to the law” be stricken, or the witness——

Trial Examiner Ruckel: That may be stricken.

The Witness: I went——

Mr. Berke: Pardon?

The Witness: I wanted to know if I could [71] explain how this came about?

Mr. Berke: Yes, go ahead.

Trial Examiner Ruckel: You may tell us anything the Company said, or the representative said about them having satisfied themselves as to the law.

The Witness: I went in one day, I will say in December, with Bruce Risley. He wanted to find out why he was demoted, he asked me to accompany him as his representative. And Mr. McPherson questioned my right to be there as a representative. He said, “I will have to contact our attorneys and we will let you know.” It was the next day or so when he notified us that we were entitled to a representative, anyone with a complaint, and we met, and we met on several occasions.

Q. (By Mr. Berke): All right. On this day,

(Testimony of Charles A. Jones.)

January 21st, when you were asked to come into Mr. McPherson's office by Leo Bash, and you requested the right to have Mr. Niemi represent you, what occurred when you made that request?

A. Well, at first he was not going to let me take Niemi.

Q. Who was not going to let you take him?

A. Bash.

Q. What did he say?

A. He said, "You won't need Niemi with you for what you are going to hear."

Q. What did you say to that?

A. I told him that we had already established this [72] right to a representative, and that if I did not have one I would not be going inside with him.

Q. Did you get Mr. Niemi?

A. And he sputtered a while and said "O.K., take him in."

Q. This is Mr. Bash?

A. Mr. Bash.

* * *

Q. (By Mr. Berke): All right, did you get Mr. Niemi? A. I got Mr. Niemi.

Q. Did the two of you then go into Mr. McPherson's office?

A. The two of us with Bash went inside.

Q. Now tell us what took place in Mr. McPherson's office.

A. Well, first of all, Mr. McPherson wanted to know what Niemi's status was there, and he stated that he was representing me. Mr. McPherson then

(Testimony of Charles A. Jones.)

said to me, "I have a complaint from a Supervisor that your work is not satisfactory." He said, "I understood that he told you to practice punching, to speed up punching, and you refused. Is that so? Is that right?"

I said, "That was intended only as an insult to me, I [73] accepted it as such, and I refused to practice."

Q. Was anything else said by anyone?

A. Niemi tried to get a word in, he was interrupted by Mr. Bash, but finally managed to say that the whole trouble in that place, inside, was Bash's fault, and if anyone was being fired it should be Bash, also that he expected to be fired for coming in there and representing me.

Q. Did Niemi say anything more than that?

A. He said that I was a good operator, or a first class operator.

* * *

The Witness: Niemi said I was a first-class operator, one of the best operators he had ever worked with, which he had been for many years.

* * *

The Witness: The only thing that I recall after that was Mr. McPherson said my check would be mailed out to me, that I was fired.

Q. (By Mr. Berke): What was his language as [75] you recall it?

A. "That I will—that if you have refused to practice punching I will have to replace you with

(Testimony of Charles A. Jones.)

someone else, you are fired. I will mail you the check home, to your home."

Q. Did you later get your check?

A. After some delay, a week or ten days. [76]

* * *

Direct Examination

(Continued)

By Mr. Berke:

Q. Mr. Jones, just before recess for the noon hour I believe you testified that Mr. McPherson among other things, told you that you were fired, that you were given your pay check, is that correct?

A. That is right.

Q. And you did subsequently receive your pay check in the mail, as I understand?

A. Yes.

Q. What did you do after you had been told that you were fired?

A. I left the building, cleaned out my locker, left the building, and went to the union hall.

Q. Was that the A.C.A. union hall?

A. A.C.A. union hall.

Q. And what did you do there?

A. In the early part of the week, either on a Monday [77] or Tuesday, the Shop Chairman had posted a notice that there would be meetings held on Friday, January 21, 1949, in two parts; that is, one meeting would be at 1:30 and the other meeting would be at 8:00 p.m.

Q. These were regularly scheduled meetings, were they?

(Testimony of Charles A. Jones.)

A. Regularly scheduled, regular scheduled shop meetings.

Q. And you went to that 1:30 meeting, did you?

A. I did.

Q. And did the matter of your discharge come up at that meeting? A. Yes.

Q. Was there any decision made at that meeting as to what would be done about your discharge?

A. A decision was made that the Shop Chairman and myself would go to the Company operating room and protest the firing, that is, would lodge a formal objection to the firing with the Company.

Q. Who was the Shop Committee Chairman?

A. The Shop Chairman was Malcolm Parks.

Trial Examiner Ruckel: Is he employed by the Globe Wireless?

The Witness: Yes.

Trial Examiner Ruckel: And this union, did it include employees other than employees of the Globe Wireless?

The Witness: Yes. This was a shop meeting for Globe [78] Wireless employees only.

Q. (By Mr. Berke): Was there anything else decided at that meeting in connection with your discharge?

A. Well, as I have stated, that we would protest or that the Shop Chairman would formally protest the discharge. I don't remember other matters that were taken up.

(Testimony of Charles A. Jones.)

Q. All right. Did you then later that day return to the operating room of Globe Wireless?

A. We did.

Q. What time was that?

A. Well, it was somewhere between 4:10 and 4:15 that we reached the operating room.

Q. Who accompanied you?

A. Malcolm Parks, Shop Chairman.

Q. And where did you go in the operating room and whom did you see?

A. As I recall, the Chief Operator Bash was back at what is called the Supervisor's desk, and Parks approached him and said that he wished to formally protest the firing.

* * *

Trial Examiner Ruckel: What did he say and what [79] did you say?

The Witness: I didn't say anything.

Trial Examiner Ruckel: What did Malcolm Parks say?

The Witness: Malcolm Parks said, "I want to formally protest the firing of Charles or Chuck Jones."

Q. (By Mr. Berke): Where were you standing or sitting at the time?

A. Well, I was probably—I was slightly to the rear of Parks, in back of him.

Q. And could you hear what was being said?

A. Yes, I could hear what was said.

(Testimony of Charles A. Jones.)

Q. Was there anything more said by either Mr. Parks or Mr. Bash?

A. Mr. Bash answered to the effect that he hadn't fired me, that he had only suspended me.

* * *

The Witness: Mr. Bash, pardon me. Mr. Bash said that he had not fired me, that he had only suspended me, that someone in the inner office had done the firing. [80]

* * *

Q. (By Mr. Berke): Will you tell us what—as best as you can recollect what Mr. Parks said and what Mr. Bash said when they got through mentioning that you had been suspended and fired by Bash?

A. He simply said, he said——

Mr. Ernst: I wonder if you would say who it is, not “he.”

Q. (By Mr. Berke): Identify who is talking.

A. Bash said, Mr. Bash said that he had not fired me, that he had only suspended me, and that he couldn't reinstate me. Mr. Parks said to Mr. Bash, “Then may we talk to the party that did the firing”? [81]

Q. What did Mr. Bash say to that?

A. I don't recall, evidently a negative answer.

Mr. Ernst: I ask that everything after the word “recall” be stricken out.

Trial Examiner Ruckel: On what ground?

Mr. Ernst: On the ground he said he didn't recall, then he said, “Evidently a negative answer.” If

(Testimony of Charles A. Jones.)

he doesn't recall how does he know it was negative, positive, or anything else?

Trial Examiner Ruckel: It may go out. [82]

* * *

Q. (By Mr. Berke): Were there other employees present?

A. There were other employees in the office.

Mr. Ernst: Excuse me. I would like to make some motions at this time if there were other employees present, and Mr. Jones is going to testify as to what was happening when other employees were present. This morning I asked that these other people be excluded from the room, and the Examiner ruled that that was improper. I move now that the cases be severed and we treat each individual case separately, and that every person who is not a party to the individual case be kept from the room while we take up that case, and then we go on to next case.

Trial Examiner Ruckel: There is only one case, there are not two cases consolidated, all you are asking is that the witnesses be separated. Again, as I said this morning, I would refuse, unless there are some other witnesses here who are not among the employees named in the complaint, and whom you expect to call as witnesses.

* * *

Trial Examiner Ruckel: Motion denied.

Go ahead and tell us what was said or done [83] by the other employees present, if anything.

(Testimony of Charles A. Jones.)

A. The other people in the office gathered around Parks, Bash and myself, and protested the firing——

Mr. Ernst: I object to the “protested”——

Trial Examiner Ruckel: What did they say, and who were they, as near as you can recall?

The Witness: I can't recall the words of the individuals. I can name some of them.

Trial Examiner Ruckel: Name as many as you can recall.

The Witness: Al Hinde, Pauline Smith, Rudy Niemi, Bruce Risley, Miss Pottle, and possibly a couple of others.

Q. (By Mr. Berke): Was Miss Williams present?

A. Viola Williams was present. [84]

* * *

The Witness: They said that they wanted [85] to get back on the circuit, that they had business to move, that they had traffic to move, that they wanted to talk to the person that had done the firing, they wanted to protest the firing, that is the gist of what each one said.

Q. (By Mr. Berke): Now, about how long did the group remain standing around Mr. Bash's desk?

A. Oh, I would say probably around 15 or 20 minutes.

Q. Will you tell us what took place after they had made their request to talk to whoever it was that had actually done the firing?

(Testimony of Charles A. Jones.)

A. About 15 or 20 minutes after we — after Parks and myself arrived Mr. Bash went to the card rack, our time cards, of their time cards, and stamped them out, stamped each one of these individuals out.

Trial Examiner Ruckel: Which individuals now?

The Witness: The ones——

Trial Examiner Ruckel: That you have previously named——

The Witness: Yes.

Trial Examiner Ruckel: As being present?

The Witness: Yes, sir.

Trial Examiner Ruckel: And when you “stamped them out,” what do you mean by that?

The Witness: That means that your pay stops for that day.

Q. (By Mr. Berke): That is, that he took the card out of [86] the rack and put it in a clock, is that it A. And sent them out.

Q. And clocked them out?

A. That is right.

Q. Then what happened after that?

A. Then he went into the inside office——

Mr. Ernst: Well,——

Q. (By Mr. Berke): Identify who went into the inside office.

A. Mr. Bash went into the inside office.

Q. Did you see him come out?

A. He came back out in a few minutes.

Q. What did he do then?

(Testimony of Charles A. Jones.)

A. Walked over to the group.

Q. That is these people that had been standing around?

A. That is right.

Q. All right.

A. And in turn offered each one of them their cards, and wanted to know if they were going back to work.

Q. What did he say to them?

A. He said, speaking to each individual, "Will you go back to work?" He offered them their cards.

Q. And what did they reply?

A. In turn they each replied that they would go back to work as soon as they could protest this firing. [87]

Q. What happened after that?

A. After all had been asked the same question, and all had answered the same, he said, "Then I will have to inform you that you are all fired."

Q. And after that announcement what took place?

A. They all continued standing there, and he said, "Go ahead and make yourself comfortable, take it easy," or "make yourself comfortable."

* * *

Mr. Ernst: Then I submit you are trying to impeach your own witness, it is improper direct examination. The witness said he didn't talk to anybody else.

Mr. Berke: I didn't ask him—— [88]

* * *

(Testimony of Charles A. Jones.)

Q. (By Mr. Berke): Where did you and the group see Mr. McPherson?

A. In the waiting room, or the entrance way to the side offices, it is inside the door, there is a waiting—there is a bench there for customers.

Q. And whose waiting room is this?

A. It is the waiting room for Mr. McPherson, Mr. Brown, or anyone else in the inside office.

Q. Was Mr. Parks present with the group and yourself? A. Mr. Parks was present.

Q. Will you tell us what was said and who said it?

A. I recall—I was standing near the door. There was so many of us, that I couldn't really get inside myself. I was standing in the back. I recall Mrs. Pottle telling Mr. McPherson that we had all been very happy, that it was a good place to work, and that she still wanted to work there, but that she couldn't take this firing by Leo Bash or this firing of Jones without making a protest, and she went on to say that the cause of all of the dissension was Mr. Bash. That is about as much of it as I got.

Q. Did Parks say anything to Mr. McPherson?

A. As I recall, he did speak to Mr. McPherson.

Q. Did you hear what he said?

A. I did not. [90]

Q. Did Mr. McPherson say anything?

A. Mr. McPherson said very little, if anything.

Q. Well, did you hear what he said?

A. Something to the effect that——

Q. No, tell us what you heard.

(Testimony of Charles A. Jones.)

A. Well, something about firing, you are fired.

Q. Well, what was it that you heard about firing?

A. Notifying the group finally that they were fired.

Mr. Ernst: Mr. Examiner, I suggest that this is a pretty crucial point and, at least, we ought to have the words.

Trial Examiner Ruckel: Give us the words as nearly as you can. Did he say that you were fired or what did he say, as nearly as you can recall his words.

The Witness: As near as I can recall it, he said, "This group is fired."

Q. (By Mr. Berke): And then what happened after that?

A. The group left the building, and I believe——

Q. Not what you believe, what you know, what you saw or heard.

A. And I recall that most of us went up to the eight o'clock meeting, appeared at the eight o'clock meeting.

Q. Were you present at that eight o'clock meeting? A. Yes, I was.

Q. What meeting was that?

A. That was the second half of the shop meeting, which was [91] scheduled so that the day people and the midnight watch could attend.

Q. And was the matter of your discharge discussed at that meeting?

(Testimony of Charles A. Jones.)

A. It was made known to the people that hadn't attended the afternoon meeting.

Q. And what was decided at that meeting?

A. It was decided that Parks and Hinde would make a further protest after midnight.

Q. Protest about what?

A. The firing of Jones.

Q. What about the firing of the four-to-midnight crew? Was there anything said about that?

Mr. Ernst: I wonder if we could not lead the witness.

Mr. Berke: I don't see anything leading about that question.

Trial Examiner Ruckel: You may answer.

A. I will say to protest the firings.

Q. (By Mr. Berke): Were you present when Parks and Hinde went to the Globe Wireless offices that night? A. No, I was not.

Q. Tell us whether or not there was a picket line subsequently established at the premises.

A. There was a picket line established.

Q. Did you serve on that picket line? [92]

A. I did. [93]

* * *

CHARGING PARTIES' EXHIBIT No. 1

All Members/Globe Shop

The Shop Committee Has Recommended That a Delegation From This Shop Pay the Management

(Testimony of Charles A. Jones.)

a Visit in the Very Near Future, to Re-inform Them That This Shop Still Desires to Be Represented by ACA, and That the Company Should Negotiate With the Committee Elected by the Membership.

Please Hold Yourself in Readiness for the Above-Mentioned Visit, the Hour and Day to Be Announced Soon.

C. A. JONES,

Acting Vice Chairman.

Aug. 3.

Received July 26, 1949.

Q. (By Mr. Brotsky): Now you described this bulletin board. Where in the place of the company is this board? Will you describe the general layout of the room or rooms in which you worked and then tell us where the board was?

A. The Shanghai circuit, it was in the back of the Shanghai circuit, which was in the southwest corner of the room.

Q. By the way, could you give us some idea of the size of the room, estimated size? Was it larger than this room, say?

A. Yes. It would be about four times as large as this [96] room. I couldn't tell you the feet.

Q. About 30 by 60 feet then?

A. I couldn't say in feet, it would be larger than that probably.

Mr. Brotsky: Well, would you care to make an estimate, Counsel, as to the size?

(Testimony of Charles H. Jones.)

Mr. Ernst: You are putting on your case. I don't see that it is at all relevant or material.

Trial Examiner Ruckel: How is it relevant or material?

Mr. Brotsky: I am trying to get the physical description of the plant so that there may be some evidence in the record to guide the understanding of the events that have occurred that have been described. If the Examiner feels that there is no need for that sort of thing, I won't pursue it any further.

Trial Examiner Ruckel: I think it could be presumed that if it was posted on the board on the company's property, that it came to the attention of the Respondent. There is certainly a presumption to that effect.

Mr. Brotsky: I thought that it might be helpful, but I won't pursue it. [97]

* * *

Q. Now, you described a conversation you had with Bash, in which you discussed with him a grievance of Pauline Smith. Do you recall that answer? A. I do, yes.

Q. Was it a regular practice, as far as you know, to take up individual grievances with Leo Bash as chief operator?

A. Very often we did.

Q. And would he settle them on the spot in some cases? A. In some cases, yes. [99]

* * *

(Testimony of Charles H. Jones.)

Q. (By Mr. Brotsky): On the occasion of that grievance discussion, did he make a decision as to the disposition of the grievance?

A. He did.

Q. And did he inform you of his decision?

A. I don't recall whether it was Mr. Bash.

Q. Did he, at the time that he was talking to you about it, did he say what his decision was? That is all I meant.

A. Not at the time. [100]

Q. When did he later inform you?

A. It was a while later; that is, it was 20 minutes or a half hour later. I was working on the circuit.

Q. And do you recall what the grievance was?

A. The grievance had to do with a person that worked overtime on the holiday and which holiday was their regularly scheduled day off.

Q. And the person involved in this particular case was Pauline Smith, is that correct?

A. That is correct.

Q. She was working on that day on the same watch that you were?

A. She was. [101]

* * *

Cross-Examination

By Mr. Ernst:

* * *

Q. Were you with Mackey in 1934 or '35?

A. I was.

Q. Do you recall there was a strike at that time?

A. I do.

(Testimony of Charles H. Jones.)

Q. Were you a participant in that strike?

Mr. Berke: Just a moment, I object, incompetent, irrelevant and immaterial to the issues involved in this case. [106]

* * *

Trial Examiner Ruckel: Objection sustained to the last question. [107]

* * *

Q. (By Mr. Ernst): Now, do you recall that there were some meetings on the 16th and the 18th of October with respect to the shortened work week, as I recall it, union shop meetings?

A. We had union shop meetings.

Q. And at that time you discussed whether to go on it or not to go on it, is that right?

A. We discussed the lay-offs, or shorter work week, yes.

Q. And you communicated the feeling of the,—by “you” I don’t mean you personally, but the committee communicated to Mr. McPherson their position in favor of the shorter work week rather than lay-offs?

A. I believe they did.

Q. Were you one of the persons who participated in that communication?

A. I believe I did, in my recollection.

Q. That was made to McPherson, wasn’t it?

A. I wouldn’t be sure if it was to McPherson or Brown.

Q. Now, is Brown the Vice-President of the Company, or a Vice-President?

(Testimony of Charles H. Jones.)

A. I don't know what his title is.

Q. Is he sort of the top dog other than General Boatwright that you people ever deal with? [125]

A. As I recall. [126]

* * *

Q. Now, where are these, where do these messages go that you type out that are visible to yourself, I mean, are they right in front of you when you are working? A. Yes, sir.

Q. Do they sort of go into a basket at the——

A. They are gathered up at the end of the day, I imagine kept for the record.

Q. Until the end of the day they are just sort of in the basket in front? A. That is right.

Q. I suppose Bash as he walks around the room can look and see them or not as he sees fit?

A. It would be possible, as I understand it, Bash didn't say anybody brought that to his attention at all.

Q. How do you know that "Little fink" had done it then? A. I just assumed that.

Q. Now, when you were working on this Grievance Committee in August you took up the matter of the bulletin board, is [130] that correct?

A. Yes, sir.

Q. And one of the things you took up at that meeting was also the matter of Bash's authority, wasn't it?

A. I can't say that the matter of Bash's authority come up at this protest against the board being removed and the bulletins confiscated.

(Testimony of Charles H. Jones.)

Q. But you recall there was some question about Bash's authority, and what he was doing, that he was throwing his weight around a little bit?

A. There was a grievance.

Q. There was a grievance about that?

A. On that line.

Q. That was taken up with Mr. McPherson, wasn't it? A. Yes.

Q. And what did he tell you about Bash's authority to hire and fire?

A. He told us that he would do the hiring and firing.

Q. Now, do you recall any instance in which Bash ever fired anyone up until January 15th of 1949?

A. I was never present when he fired anyone.

Q. Do you know that he ever did fire anyone up to that date? A. I couldn't swear to it.

Q. Do you know of anyone that he suspended up to that date? A. Never run into it. [131]

Q. Now, when you were discussing these grievances in August, did the Company accept you as the representative of the A.C.A.?

A. I am not sure that I was the acting Shop Chairman at that time.

Q. Well, you were one of the members of the committee, though, that met with Mr. McPherson?

A. Yes.

Q. Do you recall that after the meeting you put up a notice or someone put up a notice telling what

(Testimony of Charles H. Jones.)

had happened at the meeting?

A. Usually there was a notice put up.

Q. And that was the regular practice after the grievance meeting, to put a notice up on the bulletin board to tell the employees in the shop what had gone on?

A. Yes.

Q. And do you recall that that notice spelled out the fact that Bash didn't have any authority to hire and fire?

A. I believe that it did.

Trial Examiner Ruckel: Who drew up the notice?

The Witness: The Shop Chairman.

Trial Examiner Ruckel: Well, how could the Shop Chairman say whether Bash had authority to hire or fire?

Q. (By Mr. Ernst): Was that not a report of what had happened at the meeting, that quoted McPherson as having said that?

A. Yes, that McPherson objected to the idea of anyone [132] infringing on his right to do the hiring and firing.

Q. Now, in December, as I recall, you had a meeting or you talked to Bash about the matter of pay of Phyllis—what was her name? One of the girls.

Mr. Brotsky: That was Pauline Smith.

Q. (By Mr. Ernst): Pauline Smith.

A. Yes, December 24th.

Q. And, as I gather, there had been a miscomputation of her pay?

A. No, not a miscomputation.

(Testimony of Charles H. Jones.)

Q. What was the dispute about?

A. It was an attempt to chisel on the party.

Q. Well, I assume that anything the employer does is going to chisel, but just in what way was it going to be done?

A. Holidays, we had 8 paid holidays. If you worked on a holiday, you got time and a half for working in addition to 8 hours' pay for the holiday. If it was your day off and you worked, you were to be given another day off in lieu of your day off or time and a half overtime for working, which amounted to the 6th day, and this day was to be given in the week of the holiday. Mr. Bash knew this and tried to give it the next week.

Q. In other words, he was trying to give her the wrong day off for the holiday that she worked?

A. He was trying to deny her the time and a half for the day that she didn't have off. [133]

Q. So you set him straight as to what the meaning of the contract was, right?

A. I believe I did.

Q. And as a result, he concluded that you had properly stated what the contract was and he made the correction?

A. After some argument and refusal at first, he did. [134]

* * *

Q. (By Mr. Ernst): Now, during the period August 15, 1948, to January 15, 1949, how many grievances would you say were formally presented to the management?

(Testimony of Charles H. Jones.)

A. August 15th to and including January 15th? It would be pretty hard to say. I estimated about six meetings between January 15th and November 6th.

Q. You mean August 15th?

A. August 15th, the expiration of the contract, and November 6th, about six meetings and grievances. Well, there wasn't any meetings. I would say there was probably half a dozen grievances that I know of that were taken up in that time.

Q. You mean from November 6th on until January 15th? A. Yes.

Q. Now, were these grievances just informally presented, such as the one that involved you and this Pauline? A. That would be one.

Q. That would be one of the six? A. Yes.

Q. And was there another one about the alleged demotion of Bruce Risley?

A. One about that.

Q. And was there one about your pay?

A. One about my pay. There was one about Risley being assigned [145] to a watch or bidding a watch that had, for example, the Thursday watch, ending at midnight, and the Friday watch starting at midnight; in other words, 16 hours straight.

Q. Were those presented orally or were they put out in a prepared form in any fashion?

A. Outside of my grievance through the Shop Chairman, they were orally with the complainant and a witness.

(Testimony of Charles A. Jones.)

Q. Now, which one are you referring to, except the one of yours through the Shop Chairman?

A. Mine was on the pay adjustment.

Q. And that was what?

A. I wrote that one up.

Q. And do you recall whether Parks wrote one up regarding the shortened work week during November?

A. He may have, I just don't recall it.

Q. Now, what I want to get into the record is whether you had a regular form such as some unions use in some contracts, in which they spell out on a printed form the nature of the grievance and they send it in to a particular person and it goes through a regular established form of procedure set out in the agreement. Was there anything of that sort in your relations with Globe?

Mr. Brotsky: Just a moment. The contract in question expired August 15, 1948, and I was wondering whether the question was directed to the procedure that terminated on [146] August 15th or the procedure following.

Trial Examiner Ruckel: Well, both?

The Witness: Either before or after I don't recall that we had any regular form. We did not have a printed form.

Q. (By Mr. Ernst): You did not have a printed form? A. No.

Q. Now, in other words, when they were presented in writing, they would be just written down on paper addressed to McPherson or Brown or

(Testimony of Charles H. Jones.)

somebody of that sort and asking for a meeting on it? A. Yes.

Q. Now, up to November the 6th was it the general practice to write out all of the grievances and then have a formal meeting at which the Shop Committee met at a prearranged time?

A. Some matters were settled by shop committees where there was a difference of opinion. Others were taken right in without a Shop Committee meeting, where the contract was clear and the violation was apparent.

Q. What do you mean, taken right in?

A. As soon as we could get an appointment, we would go in without holding any Shop Committee meeting to decide whether it was a just grievance.

Q. By a Shop Committee meeting, you mean the meeting of the union or the ACA? [147]

A. The shop.

Q. The union Shop Committee, not a meeting with management at all?

A. Well, I will start over again.

Q. I am sorry.

A. Sometimes in the case of a person either telling or writing a grievance, it would be necessary to hold a Globe Shop meeting and determine whether this was a just grievance, whether there was grounds for grievance. Others, where it was clear to the Shop Chairman for the Grievance Committee that there was a violation, we would ask by telephone or leave a note and ask for an appointment with management.

(Testimony of Charles H. Jones.)

Q. Now, this Shop Committee meeting was a meeting solely of the employees of Globe in the shop that belonged to the union? A. Yes.

Q. And either without such a meeting or with such a meeting, you would decide that a grievance should be processed, and when you made that decision, then you would ask management for a meeting with respect to it? A. Yes.

Q. Now, were those requests normally in writing or were they usually oral? A. Both.

Q. Both? [148]

A. Sometimes we would notify Bash that we would like to have a meeting, and he would contact Mr. McPherson.

Q. And at the meetings that you had, did Mr. McPherson always attend?

A. Pretty nearly on every occasion McPherson attended the meeting.

Q. And he was the most usual person to attend the meeting? A. Yes.

Q. Now, did you attend the meeting of November 3rd? Do you recall that meeting?

A. November 3rd?

Q. That was the meeting at which there were two people present who did not belong to the Shop Committee.

A. I attended that meeting, if that was on November 3rd.

Q. Did you prepare the minutes of the report of that meeting that was put up on the bulletin board?

(Testimony of Charles H. Jones.)

A. If I could see it, I could tell you. I don't believe I did, but I couldn't say for sure.

Q. Well, now, do you remember a meeting in the middle of October with respect to the short work week with McPherson?

A. In October? If I could see the report of the meeting, I could probably tell. I don't recall.

Q. You don't recall that meeting? You don't recall whether you were there or not?

A. I don't recall offhand. [149]

Q. Now, who acted at that November 3rd meeting? Is it correct that Mr. Brown and Mr. McPherson were at that meeting, representing the company?

A. Among others.

Q. And Mr. Bash? Was he there?

A. I don't believe he was.

Q. And in the meeting of August 30th, that one about the bulletin board and that other stuff, as I recall, McPherson was the only one there. Is that in accordance with your recollection?

A. August 30th about the bulletin board?

Q. Yes, about the bulletin board and about Bash's right to hire and fire?

Mr. Brotsky: Perhaps he would refresh his recollection if he looked at the minutes of that meeting.

Mr. Ernst: Perhaps he would, but I asked his recollection.

A. Well, I was there myself at that meeting.

Q. (By Mr. Ernst): You were there yourself at that meeting?

(Testimony of Charles H. Jones.)

A. I am quite sure I was there. As to who else was there for management, I couldn't say. I believe that Mr. McPherson was present.

Q. Now, do you recall any other very important grievance committee meetings that were handled during this period from [150] August 15th up to November 3rd that you have a definite recollection of having important issues involved?

A. I remember one meeting, that wasn't pre-arranged, wherein we notified, asked, Mr. McPherson to talk with Mr. Brown. We were unable to talk with him and we had asked him to pass the word around to Mr. Brown, that inasmuch as the ACA still represented the majority of the people in the office, that we would like to represent the majority on the contract.

Q. That was taken up with Mr. McPherson?

A. Yes.

Q. And he promised to take it up with Mr. Brown?

A. Yes.

Q. And McPherson was the only one that you talked to on that particular occasion?

A. Yes. [151]

* * *

Q. Were you pestered by these people who weren't active ACA during the week that you were on this new shift?

* * *

A. I was not pestered, I was just given a cold shoulder and shown no cooperation nor courtesy that a co-worker would expect.

(Testimony of Charles H. Jones.)

Q. (By Mr. Ernst): In other words, these other people who [156] were working in the room, except for Lillie Friend and Niemi, were making it unpleasant? A. Yes.

Q. An unpleasant place to work? A. Yes.

Q. Did you resent that yourself?

A. I couldn't help but feel it.

* * *

Q. (By Mr. Ernst): Did you feel that the other employees were hostile to you with respect to your work? A. Hostile, did you say? [157]

Q. Yes.

Mr. Brotsky: Objection on the ground of immaterial, vague.

Trial Examiner Ruckel: He may answer.

A. I felt a certain amount of hostility existed.

Q. (By Mr. Ernst): Do you think that it affected your temper at all at that time?

Mr. Berke: I object, this is immaterial, and irrelevant. I think we are taking an awful lot of time to get to what counsel is driving at.

Trial Examiner Ruckel: He may answer.

A. Well, I generally get along well with [158] people.

* * *

Mr. Ernst: Well, I think that the statements of Mr. Jones as to what happened between himself and Mr. Bash can be explained to a great degree by the

(Testimony of Charles A. Jones.)

fact that Mr. Jones felt that he was being pushed around by these other people, and that he therefore did not have the patience that he would normally have, and as a result he got into these arguments with Mr. Bash, [159] and that this situation, or the background of the relation made these things flare up in this fashion. And I want to try to find out what were the things that contributed to the hot words, because the witness has clearly testified to rather hot words that he used to Mr. Bash.

Mr. Berke: I submit, Mr. Trial Examiner——

Trial Examiner Ruckel: It seems to me it is remote.

Mr. Berke: Yes.

Trial Examiner Ruckel: I don't follow the argument. Objection sustained to this line of testimony. [160]

* * *

Q. (By Mr. Ernst): Now, referring to January 19th, as I understand your testimony on direct examination, you stated that some time between your return to the Shanghai circuit after relieving the people at lunch, and the time that you were to go to lunch at 12:00 o'clock, Bash came back to you with this group of telegrams, or radiograms, and talked to you about the proper form to be used, is that correct? A. That is correct.

Q. And you got into some argument with him about this matter, correct?

A. There was no argument about the forms.

Q. Did you try to tell him that it was the right form to use?

(Testimony of Charles A. Jones.)

A. I told him, I says, "I have been using this form for years on international circuits. If Globe wants me to use a different form I can do that."

Q. In other words, it was a very peaceful arrangement, there was not any—— [161]

A. It was on my part.

Q. How about Bash?

A. Bash couldn't hardly speak to a person civilly.

Q. That was the case of everybody in the place?

A. That is true.

Q. And it was a general practice all around?

A. It is his way.

Q. I mean he just was the type of guy——

A. That roared.

Q. A bull in a china shop? A. He roared.

Q. He roared and hollered and was not very tactful? A. (No response.)

Q. And I would assume that you got so that you didn't pay attention to that?

Mr. Brotsky: Just a minute. Object to it on the ground it is irrelevant and immaterial.

Trial Examiner Ruckel: Objection sustained.

* * *

Q. (By Mr. Ernst): Did you raise your voice at all when you talked to Mr. Bash at that time?

Mr. Brotsky: Is that January 19th, counsel?

Mr. Ernst: I am now talking about the time Mr. Jones referred to, either as an out and out assertion

(Testimony of Charles A. Jones.)

that she had turned him in, or as a thought that she had turned him in.

Trial Examiner Ruckel: Did you raise your voice?

The Witness: I don't recall that I raised my voice until he started roaring.

Q. (By Mr. Ernst): But the first sentence you did say something about that "fink," didn't you?

A. Yes.

Q. And you throw that out as ordinary conversation around the place?

A. I did not say it in a loud enough tone that anyone in the back room could hear it.

Q. I mean, was that the ordinary way you referred to your [164] fellow workers?

Mr. Berke: Just a moment. I object to that as incompetent, irrelevant and immaterial, and argumentative.

Trial Examiner Ruckel: Objection [165] sustained.

* * *

Q. (By Mr. Ernst): Now, is it your recollection that this conversation with Bash that we have just been referring to, in which this word "fink" was used by you in a low tone of voice, and eventually Bash got shouting, occurred on the afternoon of January 20th, the day, or the last day you worked in the place? A. That is my recollection.

Q. And that it occurred while you were sitting at your machine operating it? A. Yes, sir.

Q. And while Bash was walking around the room?

(Testimony of Charles A. Jones.)

A. He come over to my position, yes.

Q. And while he was coming around the room you asked him to come and check and see if the form you were using was all right then?

A. I went back to his desk on that occasion. [167]

* * *

Q. Around after 2:00 o'clock. What did you do, go up to Bash's office, or Bash's desk, not "office"?

A. I went back to his desk.

Q. He doesn't have an office, he just has a desk in the room? A. Yes.

Q. You went back to his desk and checked to see if it was all right? [168]

A. Asked to look at it.

Q. At that time did you discuss anything with him other than that particular thing?

A. I simply said to him that "I expect that you will—the way things are in the office that you will probably pick my work to pieces, find fault with my work at every chance, and I am not going to go for it."

Trial Examiner Ruckel: Did he answer that?

The Witness: I don't remember that he answered it, I don't remember that he denied it.

Q. (By Mr. Ernst): As far as you recall, he ignored it then? A. That is right.

Q. He didn't even go off into one of his loud outbursts at that time? A. I don't believe he did.

Q. Now, was this before or after you talked to him on this "fink" conversation?

(Testimony of Charles A. Jones.)

A. That was before.

Q. Before that? A. Yes.

Q. It was on the same day or a different day?

A. That was the same day.

Q. Now, you went to lunch at 4:30?

A. I went to lunch at 4:00.

Q. At 4:00. And did you speak to Bash on your way back from [169] lunch?

A. I saw him during my lunch period.

Q. You saw him during your lunch period?

A. Yes, sir.

Q. Where did you see him?

A. In the rest room.

Q. Now, did he ask you to wait around in the room for a few minutes when he first talked to you?

A. He wanted to wait until the women got out of there, a couple of women that were going home.

Q. What were those, were they ACA women?

A. I don't know. They were not—they were from the inside office, I believe.

Q. And then he broached this to you after these other people had gone away?

A. After they cleared out.

Q. Did he start out in a loud voice or not on this occasion?

A. As I recall he didn't, he didn't roar to start out with.

Q. And did he mention anything about a statement from McDowell? A. Not to me.

Q. Or one of the Supervisors?

A. Not to me, no.

(Testimony of Charles A. Jones.)

Q. Did he limit what he had to say almost entirely to the matter of the amount of punching you got out?

A. In answer to my question, yes, whether it was—he said [170] my work was not satisfactory. I asked him if it was quality or quantity. [171]

* * *

Q. Now, why did you say to Bash that you wanted to know whether it was quantity or quality?

A. He said my work was not satisfactory, and I wanted to know in which way it was not satisfactory.

Q. In other words, you were still discussing it in a very calm way, I mean there was not any excitement at that stage of the game at all?

A. Not on my part, there was not.

Q. Was Bash still——

A. Bash was fairly quiet. [172]

* * *

Q. (By Mr. Ernst): Now, Mr. Jones, you then refused to practice on company time?

A. Yes, I told him it was an insult, that I couldn't do it. [176]

* * *

Trial Examiner Ruckel: The Complaint doesn't charge the Company with seeking to discourage union activities by speeding up. I don't know what the terms are they use, but it is the ordinary synonym as "go faster." [190]

* * *

(Testimony of Charles A. Jones.)

Q. And were Mr. Parks and Mr. Hinde given instructions as to what they were to do?

A. They were.

Q. And what were those instructions?

A. That they were to request from the subordinate person in charge, to have a meeting to protest the firing; that is, with the upper brackets. [192]

Q. In other words, they were to ask the supervisor in charge at 12:15 to get for them a meeting with somebody higher up, is that it?

A. Yes, whoever done the firing.

Q. And did you know at that time who had done the firing?

A. I had been fired by Mr. McPherson. [193]

* * *

Q. Now, did you pay attention to what Bash said in the course of that conversation with you and Parks and with the group of people around?

A. Not too much, I was not doing any talking, and there was a lot of chatter, protests, confusion, wrangling.

Q. So you don't have much of any recollection what Bash said then?

A. Oh, I heard him order them back to the circuit, I heard him say, "You are all fired," screaming and roaring, both. [194]

Q. That is all that you recall that he said?

A. Approximately all that I recall.

Q. Did you recall him saying anything to the effect that he was not the one that fired you, and they should take the matter up with the person that did fire you?

(Testimony of Charles A. Jones.)

A. I believe in the course of the various conversations he mentioned that.

Q. Now, were you ever told by Neil Brown, or by any notice from Neil Brown that you could come in and talk to him any time you wanted to about your troubles?

A. I was told orally as I sat on the circuit working one day, before November 6th. [195]

* * *

Q. Now, when you went over to see McPherson with the group on the late afternoon of the 21st, did you have any trouble getting into his office?

A. I didn't have any trouble because I hardly got into his office, I was very much in the background.

Q. Did the other people have difficulty getting in to see him?

A. When they finally decided to meet with him, they simply walked in the door.

Q. And who finally decided to meet with him?

A. McPherson.

Q. In other words, then you got the meeting you wanted when you were talking to Bash?

A. Some hour later, I would estimate about an hour later, after 4:15.

Q. And so you would say roughly at 5:15 they agreed to have the meeting with Mr. McPherson?

A. That is right.

Q. The company agreed that McPherson would talk to you? [198]

A. Roughly at 5:15.

* * *

(Testimony of Charles A. Jones.)

Q. (By Mr. Ernst): Then at the time of the discussion with Bash, in the interim between 4:15 and 5:15, when the group went [199] to see McPherson, was there a steady discussion between the group and Leo Bash, or did everybody just sit around and say nothing?

The Witness: Part of the time I believe Bash was working the circuit, or doing clerical work.

Q. But the rest of the time there was conversation with Bash about this matter? A. Yes.

Trial Examiner Ruckel: Did Bash ordinarily work the circuit and do clerical work?

The Witness: He spent quite a bit of time doing clerical work, and some time on teletypes, but didn't work the radio circuits.

Trial Examiner Ruckel: Was he working the regular circuits during this hour, if you know?

The Witness: I believe that he worked on the radio circuits.

Trial Examiner Ruckel: I say why was he at this time?

The Witness: Well, there was nothing else for him to do, he had worn himself out screaming and roaring. [200]

* * *

Q. (By Mr. Ernst): And the several people who would normally have been doing that work were among the group who were sitting down at that time?

A. The people that were on at four o'clock were not on the circuits.

(Testimony of Charles H. Jones.)

Q. No, and it was those people who were to come on at four o'clock, and who were not on the circuit, were then sitting in, not doing their work, is that right?

A. Waiting for a representative of the company to discuss this firing with.

* * *

Q. (By Mr. Ernst): As I recall, one of the last things that Bash did at the time you and this group were in there on the afternoon between 4:15 and 5:15 was to ask each one of the individual persons to go back to his circuit and return to work, is that correct?

A. Yes.

Q. And then, as I recall it, they said that they would not [201] go back to work, is that right?

A. They didn't say they wouldn't go back, they said they would go back to work when they could protest the firing.

Q. In other words, they were going to go back to work when they could protest?

A. Yes.

Q. In other words, they didn't feel they had made their protest at that time?

A. Not with the proper party, no.

Q. And they therefore wanted to make the protest with someone else, is that correct?

A. With the person who was responsible for the firing.

Q. And did anybody tell them they couldn't make their protest to whoever was responsible?

A. I don't remember the words that they used

(Testimony of Charles H. Jones.)

but there was certainly a considerable delay in not being able to meet with someone.

Q. And in the past had you individually frequently asked McPherson to have meetings with you?

A. In various ways sometimes contacted him. Generally contacted Bash to request the meeting.

Q. You generally contacted Bash to request the meeting? A. Yes.

Q. But you yourself had on occasion gone directly to McPherson and asked for a meeting? [202]

A. If I didn't, the others did, I don't recall who.

Q. On this day nobody went to McPherson and asked him directly for a meeting?

A. That wasn't the procedure.

Q. What was the procedure?

A. The regular procedure was——

Q. No, what was the procedure that day?

Mr. Berke: We will object to that.

Trial Examiner Ruckel: Tell us the procedure that day and tell us whether or not that was the customary procedure.

The Witness: The regular procedure was to work through Bash, was the regular procedure.

Q. (By Mr. Ernst): And was it regular procedure to refuse to work from the time you asked Bash for a meeting until you got one?

Mr. Berke: I object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): The regular procedure was

(Testimony of Charles H. Jones.)

to ask Mr. Bash for a meeting with Mr. McPherson?

A. That was the usual procedure.

Q. And you could, however, go directly to McPherson, if you wanted to, and you or other members of the Shop Committee did that from time to time?

A. It had been done.

Q. And did you frequently have delays between the times [203] you asked Bash for a meeting and the time you got the meeting with McPherson?

A. I answered that once before, by saying that sometimes it wasn't convenient for him to meet with us that morning or the next morning and we understood.

Q. And on those occasions you would then continue your work until the time for the meeting arrived?

A. Under ordinary conditions that was the procedure.

Q. Now, on any occasion were you told by Bash that you could not meet with McPherson?

Mr. Brotsky: Are you referring also to the events of January 21st, when you say any occasion? I will object unless that point is made clear.

Trial Examiner Ruckel: Well, is the point worth any more time? It is quite clear what the usual procedure was and what the procedure was in this case. Objection sustained.

Q. (By Mr. Ernst): Now, do you recall that the Shop Committee wrote a letter to Mr. Brown on one occasion, asking whether he agreed with McPherson's position interpreting Brown's notice of No-

(Testimony of Charles H. Jones.)

vember 6th to the effect that McPherson wasn't going to meet with the ACA Shop Committee as such any more?

A. I believe such a letter was written.

Q. And did you have any difficulty in getting that letter into Mr. Brown? [204]

Mr. Berke: I object. I don't see the relevancy of this line of questioning.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): What time was your afternoon meeting on January 21st?

A. 1:30, I believe.

Q. And how long did that meeting last?

A. I would have to estimate that. Probably an hour and a half.

Q. In other words, to around three o'clock?

A. To give them time to eat.

Q. And at that meeting were virtually all the people present who were going to go on at four o'clock and who were regular members of the ACA, Globe?

A. Practically all of them.

Q. At that time was a decision made as to the time at which this protest would be made?

A. It was set.

Q. And just what form did you decide the protest was to take?

A. I answered that yesterday, that Parks would formally protest the firing.

Q. Now, is this the first time that your group had ever made a formal protest as to any action of the company?

(Testimony of Charles H. Jones.)

A. You mean violations of the contract on grievances? [205]

Q. Is this the first time you ever had made a formal protest? You said that you were going to make a formal protest. Was this an unusual thing or had you done that on other occasions?

A. We had met, or we had gone into the inside office where we could see Mr. Brown or Mr. McPherson to inform him that we wanted the company to negotiate a new contract with ACA.

Trial Examiner Ruckel: Was that the whole group or the Grievance Committee?

The Witness: This was the people leaving at four and going to work at four.

Q. (By Mr. Ernst): The whole group went in to see Mr. Brown about that matter?

A. Yes, tried to see Mr. Brown.

Q. They didn't see him?

A. On the occasion when I was the spokesman, we couldn't see Mr. Brown.

Q. Who did you see?

A. We saw Mr. McPherson and he promised to convey the information to Mr. Brown.

Q. And at the 1:30 meeting did you discuss whether you would go to see Mr. McPherson or Mr. Bash?

A. I believe it was decided to see Mr. Bash, to see the party that did the firing.

Q. Now, when the group came around you and Parks, after you [206] came into the operating room, did they come with the two of you as soon as you

(Testimony of Charles H. Jones.)

arrived in the room or after the conversation had begun?

A. I believe after the conversation began.

Q. In other words, they overheard the conversation and then became interested and came over?

A. I don't know that they overheard it. They came over.

Q. And was it part of the plan that the formal protest was to include all of the people coming together to see Mr. Bash?

A. To protest, yes.

Q. And was it the plan that all of them were to refuse to work?

A. No, that they would protest to the firing party and when the protest was heard, return to their positions.

Q. That was the program that was worked out?

A. Yes.

Q. And by the matter of hearing the protest, what did you mean?

A. By talking to the party that had done the firing and had the power to reinstate.

Q. And all that the group wanted to do then was to talk to that person?

A. Yes.

Q. Now, when they had gone through the meeting with Mr. McPherson, they had talked then to the person that they were [207] interested in talking to, is that right?

A. I assume that he was the right person. He had fired me.

Q. And then, therefore, when they were through talking with Mr. McPherson, they had accomplished

(Testimony of Charles H. Jones.)

everything that they had wanted to accomplish by this protest?

A. They had not accomplished the reinstatement.

* * *

Q. And as I understand it, at the end of the conversation or shortly before the end of the conversation with Mr. McPherson, it was clear that they were not going to reinstate you, is that correct?

A. He made that clear.

Q. And he also made it clear that the other people could go back to work, didn't he?

A. I believe that he did offer them the opportunity to go [208] back to work.

Q. And then they did not go back to work?

A. No, they were fired.

Trial Examiner Ruckel: What was your answer?

The Witness: No, they were fired.

Q. (By Mr. Ernst): But they said they wouldn't go back to work in between the offer and the time that they were fired? A. Yes.

Q. Now, during the course of these two meetings with Mr. Bash and Mr. McPherson, did anybody on any occasion say that he would not work until you were put back to work?

A. I believe that was said by some of them.

Q. By some of the people?

A. Some of the people.

Q. Was that the general attitude of everybody so far as you could tell? A. I would say so.

* * *

(Testimony of Charles H. Jones.)

Redirect Examination

By Mr. Berke:

Q. Mr. Jones, on the occasion when you and Parks approached Mr. Bash and Mr. Parks asked that you be reinstated, what did Mr. Bash say?

A. That he had not done the firing, that he had suspended me and that he could not reinstate [209] me.

Q. And was it following that statement, that Mr. Parks and the others who had gathered around demanded to see whoever had done the firing?

A. Yes. [210]

* * *

Q. In the past when you had requested to see someone higher up through Bash what was the usual procedure if you cannot see the person immediately?

* * *

Q. (By Mr. Brotsky): On those occasions was there an answer usually given, however, as to whether or not you could see the person then or at some other time?

A. Generally, as I recall, we would ask for a meeting for the following day, because we that happened to work the midwatch, off at 8:00 o'clock, did not want to wait from 8:00 to 9:00 or 10:00 o'clock and then not be able to see Mr. McPherson or Mr. Brown. [216]

* * *

(Testimony of Charles H. Jones.)

Recross-Examination

* * *

By Mr. Ernst:

Q. In other words, you don't recall much of anything as to what Mr. Bash answered when you asked him for the meeting with McPherson?

A. Mr. Parks asked him, was the one that lodged the protest, and asked him.

Q. Your recollection as to what he said is very vague at this time?

A. Pretty much in the background.

* * *

RUDOLPH W. NIEMI

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Berke:

Q. Mr. Niemi, were you ever employed by Globe Wireless, Ltd.? A. Yes, I was.

The Reporter: May I have his name, please?

Q. (By Mr. Berke): Will you give the reporter your name and [220] address, please?

A. Yes. Rudolph W. Niemi, N-i-e-m-i, 147 Arch Street, San Francisco.

Q. And you say you were employed by Globe Wireless, Ltd.? A. Yes, I was.

Q. When were you first employed by that Company? A. April of 1948.

(Testimony of Rudolph W. Niemi.)

Q. And when were you last employed there?

A. January 21, 1949.

Q. What position did you hold on January 21?

A. I was a teletype operator.

Q. And what watch did you work on?

A. Noon to 8:00 p.m.

Q. Were you a member of any Union at the time you first obtained employment at Globe?

A. I was a member of the ACA, Local 9.

Q. And did you continue to be a member of that Union while you worked at Globe?

A. Yes, I was a member of the Union all the time I worked at Globe. [221]

* * *

Q. (By Mr. Berke): All right, then, when you heard that, what else did you hear?

A. Mr. Bash asked Charlie to go into the front office and Charles returned and said, "I would like to have your representative go in with me," and Mr. Jones asked me to go, and Mr. Bash turned around and he told me to sit down, that I wouldn't be needed in there, and Charles reiterated that he wanted a representative and that he would like to have me.

Mr. Bash left the operating room, came back shortly, and [226] said it was all right for me to go in with him.

Q. Did you then go in with Mr. Jones?

A. Yes.

Q. And where did you go?

(Testimony of Rudolph W. Niemi.)

A. We went to Mr. McPherson's office.

Q. Who was present in Mr. McPherson's office besides Mr. Jones, yourself and McPherson?

A. Mr. Bash was present.

Q. What took place in there?

A. I asked Mr. McPherson if it was all right for me to act as Charles Jones' representative, and Mr. McPherson said yes.

Q. And can you tell us what took place, what was said, what was done?

A. As near as I can recollect, the following conversation took place, Mr. McPherson told Charles that his work was not satisfactory. No, that wasn't it. He told Mr. Jones that Mr. Bash reported that his work was not satisfactory, and Mr. Jones asked Mr. McPherson, "Qualitatively or quantitatively"? and Mr. McPherson returned, "Quantitatively." And he asked Charles if he was going back on the circuit to practice or if he had refused to practice, and Mr. Jones returned yes, that he had refused to practice. And about that time I think—I shouldn't say I think, I put in some words myself.

Q. What did you say?

A. I told Mr. McPherson that Charles Jones was a very good [227] operator and "He doesn't need any practice." I said, "It is an insult to the man to say that he needs practice."

Q. Did you say anything more?

A. Then I said, "You are firing the wrong man. Mr. Bash sitting here should be fired instead of Mr.

(Testimony of Rudolph W. Niemi.)

Jones, because he is the cause of all that trouble in the operating room."

Q. What did Mr. McPherson say about it?

A. Mr. McPherson didn't say anything other than, "Well, Mr. Jones, I am afraid you are discharged." [228]

* * *

Q. Was there anything more that transpired in that office?

A. Yes. Just as we were rising to get up, I told Mr. Bash and Mr. McPherson, "I suppose I will be next to get fired, because of this."

Q. Was anything said about that?

A. Not a word.

Q. Was that all that took place then?

A. Then we proceeded out. On our way out, Mr. McPherson told Charles that his check would be mailed to him. [229]

* * *

The Witness: Yes, I will quote as closely as I can. Mr. Bash told Mr. Boatwright that we would have to get tough with these people and he said, "They are Communist-dominated." And I didn't see Mr. Boatwright say anything back to him except nodding his head.

* * *

Q. What time did you go to lunch on that day?

A. I went out to lunch at 4:00 p.m.

Q. And about what time did you come back from lunch? A. 4:20.

(Testimony of Rudolph W. Niemi.)

Q. Did anything unusual happen after you came back from lunch?

A. Well, I would say the usual thing was happening, and that was Leo hollering at somebody and he was hollering at Bruce Risley to get back on the circuit. [230]

Q. Where was Mr. Risley?

A. He was over by the Supervisor's desk and there were a number of people standing by.

Q. Do you know who these people were that were standing by, as you say?

A. They were people—I can think of the names of them, yes, pretty closely.

Q. Will you name them?

A. Mr. Parks was there and Charles, Charles Jones, and Pauline Smith and, let's see, there is a girl named Williams, her last name. Well, anyway——

Q. Sylvia Pottle, was she there?

A. She wasn't at that time. She came later.

Q. Do you remember any other names?

A. Well, whoever was supposed to be from 4:00 to midnight. That is about all the names I can recollect right now.

Q. All right, what was the group doing?

A. They were protesting the firing of Charles Jones.

Mr. Ernst: I ask that the conclusion be stricken, that he state what he heard.

Trial Examiner Ruckel: It may stand. Tell us

(Testimony of Rudolph W. Niemi.)

also what you heard any of them say that made you believe that they were protesting.

The Witness: I can't remember which woman I heard say it, but I heard her say, "Please reinstate Charlie Jones so that we [231] can all get back to work."

Q. (By Mr. Berke): What else did you hear?

A. Oh, Leo Bash wasn't saying much, but he was fuming around the office there. At that particular moment there weren't many words going on right then at that moment, when I came back, except Leo was telling Bruce to get back to the circuit.

Q. Did you say anything?

A. If I did, I can't remember it right now.

Q. Did you join the group?

A. Yes, oh, I joined the group.

Q. What was your purpose in joining the group?

A. My purpose in joining the group was to join in the protest for the unjust firing of Charlie Jones.

Q. How long did the group remain around Mr. Bash's desk?

A. I would estimate closely around an hour.

Q. And what happened at the end of that hour?

A. Well, before that hour, in the interim there, Mr. Bash had told us we were all fired, and he went over and got our cards and timed us out.

Q. Where did he get those cards?

A. They have a file there by the time clock, where all our cards are put in.

Q. What did he do with that?

(Testimony of Rudolph W. Niemi.)

A. He timed us all out.

Trial Examiner Ruckel: He punched [232] the clock?

The Witness: He punched the cards himself.

Trial Examiner Ruckel: On each card?

The Witness: Yes.

Trial Examiner Ruckel: What did he do with the cards then?

The Witness: He took them out of the file and where he put them I didn't notice.

Q. (By Mr. Berke): What happened after that event?

A. Well, after he did that, I didn't hear much more conversation but I heard Mr. Parks conferring with Leo and we tried to get an audience with someone on the inside.

Q. Did you get that audience?

A. I shouldn't say we got the audience, no, for the reinstatement of Charles.

Q. What happened?

A. Mr. McPherson had us come into the office, but we didn't go into his office, just into a little ante-room, something like that, by a gate.

Q. Did the entire group, including yourself, go into that ante-room?

A. Yes, we all went in there.

Q. And did you hear what was said?

A. Yes, I heard quite plainly what was said.

Q. What did you hear, and will you tell us who said it, if you recall? [233]

(Testimony of Rudolph W. Niemi.)

A. Sylvia Pottle was talking to Mr. McPherson but Mr. McPherson didn't say a word back at all. He kept very quiet and Sylvia told him that he should be firing Leo Bash instead of Charlie Jones, that it was very unfair and unjust and that we had all liked our jobs at Globe Wireless and we wished to continue working and there was no reason for the trouble and that Mr. Bash was the cause of all the trouble.

Q. Did Mr. McPherson tell you to go back to your work or did he say if you wanted to, you could go back to work?

A. At no time did Mr. McPherson personally say that we could go back to work.

Q. What did he say about your firing, if anything?

A. The only thing he told us was that our paychecks would be mailed and a little slip would come with it, notice of our discharge.

Q. Did you subsequently get your check in the mail?

A. Yes.

Q. That Mr. McPherson referred to?

A. Yes, we did.

Q. And did you get that slip?

A. Yes, I got a slip also.

Q. I show you a document marked General Counsel's Exhibit 10 for identification and ask you if that is the slip you refer to?

A. Yes, that is the one. [234]

Mr. Berke: I offer General Counsel's Exhibit 10 in evidence.

(Testimony of Rudolph W. Niemi.)

Mr. Ernst: No objection.

Trial Examiner Ruckel: It will be received.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 10 for identification, and was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 10

In View of the Termination of Your Employment,
We Hand You Your Final Pay Check Covering
Salary Through January 22, 1949. This Check Also
Includes Any Accrued Vacation Pay.

Received July 27, 1949.

Q. (By Mr. Berke): Were you ever called to work after that?

A. You mean at Globe Wireless?

Q. Yes. A. No, I was not.

Q. Did you serve on the picket line?

A. Yes, I served on the picket line up until I became ill. It was pretty cold weather. [235]

* * *

Trial Examiner Ruckel: What time did you go to lunch, by the way?

The Witness: My lunch was from four to four-thirty.

Q. (By Mr. Brotsky): Did you see Mr. Parks and Mr. Jones talking to Mr. Bash?

A. At what time?

(Testimony of Rudolph W. Niemi.)

Q. When you returned from lunch, you saw Mr. Parks conferring with Leo? A. Yes.

Q. You stated that you joined the group?

A. Yes.

Q. Did you want to see Chuck Jones reinstated?

A. That was my object in joining the group. I wanted to see him reinstated. [239]

* * *

Cross-Examination

By Mr. Ernst:

Trial Examiner Ruckel: Well, I think we can simplify it possibly by saying this: The only question is was Jones discharged because of his union activity, or for legitimate business reasons, in this case, as the Answer alleges, for insubordination and refusal to practice on a machine. Now, whether or not his refusal to practice on the machine was motivated merely because he was lazy, or because he didn't think he needed practice, or because of some resolution of the Union at some previous time, it doesn't seem to me as too relevant. The question is one of fact, what motivated the Company in discharging Mr. Jones, not what motivated Jones.

I am going to sustain the objection to the entire line of testimony as to this previous meeting which you have asked the witness about.

Mr. Brotsky: Can that go out then, Mr. Examiner?

Trial Examiner Ruckel: Yes, it may go out, the testimony of this witness as to a previous meeting

(Testimony of Rudolph W. Niemi.)

of the Union. He testified that he was not present at the meeting. [263]

* * *

Q. Now, at the time that you got back from your lunch period, were Parks and Bash the only ones that were talking? You said Parks was conferring with Leo?

A. Yes, Parks was conferring with Leo when I got back. The very moment I got back, they weren't, no, because Leo was [266] hollering his lungs out at Bruce Risley.

Q. And where was Bruce Risley?

A. He was standing right back there with the group and Leo was telling Risley to get back on the circuit or he would be fired.

Q. Did he tell anybody else to get back on the circuit?

A. Yes. Later he told all of us to get back.

Q. And was that about the last thing that he did tell everybody, to go back on the circuit?

A. Yes.

Q. And then, as I recall, he told you that you were fired, when you didn't go back on the circuits?

A. Yes. He told all of us we were fired, Leo himself.

Q. And that was the end of your conversation with Bash?

A. Well, at that particular time he kept coming back and forth from the operating section where they were actually doing the work to us, back and

(Testimony of Rudolph W. Niemi.)

forth, and he was like a bull in a china closet, just going back and forth. 1

Q. Well, what I am asking you is: Was the last thing he said to you was to go back to work and the people said they wouldn't and then he said, "You are fired," is that correct?

A. No. It didn't go that way.

Q. What was it?

A. He kept telling various ones of us to get back on the circuit. He said, "Get back on the circuit and go to work." [267]

Q. What did they say in reply to that?

A. Most of us just kept quiet. He came around later and we told him that we would go back to work when Charlie Jones was reinstated. [268]

* * *

Q. Now, earlier, as I understand it, you came in and Bash was shouting at Bruce Risley to get back at the circuit and after he let his voice drop down, there was this conferring between Parks and Bash. At that time, as I understand you, you said that Parks was asking to get an audience, is that correct? A. That is the essential thing.

Q. Do you recall what Parks said at that time?

A. I don't recall the exact words, no. He tried to get an [273] audience with whoever he could to get Mr. Jones reinstated.

Q. He said you wanted an audience with whoever could reinstate Mr. Jones? A. Yes.

Q. Was General Boatwright's name mentioned?

(Testimony of Rudolph W. Niemi.)

A. I heard Leo holler, "Why don't you go in and see the General," just like that.

* * *

Q. Now, you said you remembered one of the women saying, "Please reinstate Charlie Jones so that we could get back to work." Do you recall any reply to that?

A. No, he didn't reply to those queries. Leo didn't reply to any of us, when we said that we wanted him to reinstate Charlie. He just kept along the same vein, telling us to get [274] back on our circuits, I mean prior to that, but then he said we were all fired and timed us out. [275]

* * *

Q. By the time you returned usually from lunch, had the people who were off at the 4:00 o'clock hour, gone from the place?

Mr. Ernst: I object as immaterial and cumulative.

Trial Examiner Ruckel: He may answer.

A. Yes, they were gone. There was no reason for their being there. The shift was over.

* * *

Recross-Examination

* * *

By Mr. Ernst:

That may be a matter of argument but the simple fact that I think should be established is that these

(Testimony of Rudolph W. Niemi.)

people were taking the place of the people who were refusing to work and that Bash was trying to get the people who were regularly assigned, to go back to work.

Trial Examiner Ruckel: That is a matter of argument. Isn't that apparent from the record? What do you want to do, wring an admission from the witness? He testified that the people were standing around. They weren't on their circuits at 4:20 or 4:30. Counsel shows that there were four or five other people, one of them supervisors, that didn't ordinarily do this, and one or two others. They were manning the circuits. Now should we sit down here and argue as to who should have been the people on the circuits at that moment? It is rather clear, isn't it?

Are there any further questions? [280]

* * *

Trial Examiner Ruckel: The witness has said several times both on direct and cross how they were being handled and even naming them as to who they were. The only thing I stopped you with was on your argumentative question that was going to show that they were not the ordinary people that were handling the circuits, and I stated that that was self-evident. Now, if you are going to litigate what the Examiner says is [284] self-evident, you are painting the lily, aren't you?

Anything else? [285]

* * *

SYLVIA POTTLE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: Your name, please?

The Witness: Sylvia, S-y-l-v-i-a, Pottle, P-o-t-t-l-e.

By Mr. Berke:

Q. What is your address, Miss Pottle?

A. 2419 Durant Avenue, Berkeley, California.

Q. Were you ever employed by Globe Wireless?

A. Yes, I was.

Q. When were you first employed there?

A. September, approximately September 17, 1946.

Q. And when were you last employed at that place? A. January 21, 1949.

Q. When you first obtained employment at Globe were you a member of any union?

A. No, I was not.

Q. Did you join any union after you obtained employment at Globe? A. Yes, I did. [286]

Q. Which union?

A. ACA, CIO, Local 9. [287]

* * *

Q. (By Mr. Berke): Do you recall January 20, 1949?

(Testimony of Sylvia Pottle.)

A. I was off on that day. It was my regular day off.

Q. Did it come to your attention that day or thereafter, that Chuck Jones had been discharged?

A. I didn't know about Chuck Jones' discharge until I came to work on January 21st, at approximately 4:15.

Q. In the afternoon? [296]

A. When I first heard of Chuck Jones' discharge.

Q. When you got to work on January 21st at 4:15 in the afternoon, what did you find?

A. Pardon me, I came to work at four o'clock. At 4:15 was when I first heard of Chuck Jones' discharge.

Q. All right. What happened at 4:15 that brought it to your attention?

A. Bruce Risley came over to me and informed me that Chuck Jones was fired.

Q. Who was Bruce Risley?

A. Bruce Risley was the teletype operator for Globe Wireless.

Q. What did you do when you learned about that?

A. Do you want to know the words that I used, the exact words?

Q. I want to know what you did, what you said.

A. Well, I said, "Well, that is ridiculous. What is the reason?"

And he said, "Well, the company's reason is incompetent and non-production."

(Testimony of Sylvia Pottle.)

And I said, "That is ridiculous." [297]

* * *

Q. (By Mr. Berke): What did you do after you got that information?

A. Bruce told me that they were asking for a, they requested a meeting with Mr. McPherson in regard to it, and did I want to join them, and I did.

Q. And did you want to join whom?

A. The party, the group that was over at the desk, Mr. Bash's desk.

Q. And did you join them? A. I did.

Q. Who in addition to yourself and Mr. Risley were in that group?

A. As I recall, there was Pauline Smith, Chuck Jones, Parks, Hinde, Viola Williams, a fellow by the name of Ted Byer, Rudy Niemi.

Q. Is that about all that you——

A. That is about all I can think of off hand.

Q. All right. Now, you say that you came to work at four o'clock. What did you do between four and four-fifteen when you were informed of Mr. Jones' discharge? [298]

A. I went to my department and started working.

Q. Started working? A. Yes, uh-huh.

Q. At your desk?

A. Well, we really don't have a desk, we just run around from one department to another.

Q. But you were actually on the job?

A. I was on the job.

Q. Were you able to hear what went on in this group that you have just described?

(Testimony of Sylvia Pottle.)

A. The only voice I heard was Leo Bash's.

Q. What did you hear Mr. Bash say?

A. I heard him say, "Get back to your position."

Q. Did the people go back to their position?

A. No.

Q. Did you see him do anything? A. No.

Q. How long did you remain with the group?

A. When I joined them it was—I remained with them until we were informed we were fired.

Q. And who informed you that you were fired?

A. Leo Bash.

Q. About when was that?

A. Approximately an hour after I—about 5:15, I should say, thereabouts. [299]

Q. Did you see Mr. McPherson that day?

A. I did.

Q. Did you see Mr. McPherson before or after Bash told you you were fired?

A. After Bash told us we were fired.

Q. Was anyone else with you when you saw Mr. McPherson?

A. We were altogether in a group.

Q. That is all the people that you have mentioned? A. All the people I mentioned.

Q. And in what room were you together?

A. In the administrative room, in the front office.

Q. Is that a room that leads into, is connected with Mr. McPherson's office?

A. It is the anteroom of the main offices.

Q. What happened in that room?

A. We walked right into the anteroom, and Mr.

(Testimony of Sylvia Pottle.)

McPherson walked out, came right to the gate, where there is a gate that leads into the inner office from the anteroom, he came to the gate, and we were all standing around, and I heard Al Hinde say to him, "Leo just fired us."

Q. What did Mr. McPherson say?

A. "That is right."

Q. Did you participate in any of the discussion?

A. I did.

Q. What did you say, and to whom did you say it? [300]

A. I spoke to Mr. McPherson personally, I asked him if I could say a few words.

Q. What did he say?

A. He said, "Go ahead." Well, I told him that we all liked our jobs very well, I did, I wanted to continue working there, I would like him to give us some reasonable excuse for Chuck Jones' discharge, that working in close cooperation with Chuck I couldn't accept the reason they gave, I mentioned the fact that I believed it was only fair for Mr. McPherson to give us an interview, some reason, and that Leo Bash, Leo Bash's word should not be taken as final since he—well, I used the word "raving," since he was a raving maniac, and that it was impossible to deal with him in a reasonable way, and that we would expect a little more consideration from Mr. McPherson, and that even in a court of law a man is innocent until proven guilty, and I might have said some more, I can't remember.

Q. Is that about all you remember of what you said?

(Testimony of Sylvia Pottle.)

A. Well, about that, that is right.

Q. Did Mr. McPherson say anything in response?

A. Well, I did mention the fact, I asked him if our work was satisfactory, and he had always been satisfactory, at least to the best of his knowledge, and he nodded his head, but he didn't say anything.

Q. Other than nodding his head? [301]

A. That is right.

Q. He didn't say anything?

A. That is right.

Q. Did anyone else besides you and Mr. Hinde say anything?

A. Somebody in the group mentioned the fact about getting paid, getting paid off.

Q. Yes. What did Mr. McPherson say about that? A. He said the checks would be mailed.

Q. And then what happened?

A. And, well, the interview was over as far as we were concerned.

Q. Did you leave the room?

A. We left the room.

Q. Where did you go?

A. Well, I walked into the locker room to get my belongings.

Q. Was anyone with you?

A. Pauline Smith was with me, one of the operators, one of the employees at Globe.

Q. About what time would you say this was that the interview ended with Mr. McPherson and you went into the locker room?

A. I would say approximately 5:30 p.m.

(Testimony of Sylvia Pottle.)

Q. Did anything take place in the locker room while you were in there?

A. Yes; Leo Bash followed me. [302]

Q. Did he talk to you? A. He did.

Q. What did he say to you?

A. He said, "Sylvia," he says, "I feel terrible about this." He says, "I think you are backing the wrong union." He said, "You don't know what you are doing."

And I says, "Leo," I says, "There is only one thing for me to do under the circumstances," I says, "There is no reason for you to say that I am backing the wrong union." I says, "This is a union that has always been fair with us and dealt with us very fairly, and we have always been happy working at Globe with this union, and I have never had any reason to believe that it couldn't continue."

So he says, "Well," he says, "Sylvia," he says, "We just have to get rid of the communists."

Q. Did you say anything in response to that?

A. I says, "That is kind of a steep remark to pass. Do you have any proof to back it up, that there are any communistic activities in this union?"

I said, "I personally have never seen it, I have never heard or seen of any communistic activities. What makes you pass a remark like that?"

Q. What did he say, if anything?

A. He said, "Well,—" he says, "The ACA will never come back in here again," he says, "And if you are wise," he says, [303] "You will get out while the getting is good."

(Testimony of Sylvia Pottle.)

Q. Was that the end of that conversation?

A. The end of that conversation as far as I can remember.

Q. Then did you get your hat and coat and leave?

A. That is right.

Q. Did you talk with Mr. Bash again after that?

A. Yes.

Q. When?

A. He called me on the telephone the following night, or the night after that.

Q. Where were you when he telephoned you?

A. Well, I was visiting a neighbor upstairs from where I live, he had called my home, my husband told me that I was upstairs, and he called me up there.

Q. And in any event, you got a telephone call while you were visiting this neighbor?

A. That is right, that is right.

Q. And did the person identify himself?

A. That is right.

Q. What did he say?

A. "Sylvia," he says, "This is Leo. I wanted to call you and talk to you."

Q. What was the conversation you had with him then?

A. Well, the conversation lasted exactly 40 minutes, it is very difficult to say everything, but I can give you an [304] idea of what the conversation was about. He told——

Q. Well, as best you recollect what he said and what you said.

(Testimony of Sylvia Pottle.)

A. He said, that he wanted to read a letter that was submitted, the letter which was submitted to Mr. McPherson in regards to Chuck Jones. He read that letter to me on the telephone. And he said, "Sylvia," he says, "If I knew—" after he read the letter, of course, he said, "Sylvia, if I knew that this letter would have caused such a bombshell," he says, "I never would have submitted it in the first place."

Q. What did you say to that?

A. I said, "Leo, that is the trouble with you, you are so hotheaded, you do things before you think." I says, "That is what has been the trouble all along." He said, "I know it," he said, "I realize that," and he says, but he says, "It just had to come to a head sometime and——"

Trial Examiner Ruckel: Beg pardon?

The Witness: "It just had to come to a head sometime." And I said to him, "Well," I says, "I think I have a general idea of what it was all about, I think the company was going to start with Chuck Jones and go right down the line."

He says, "You have a general idea."

Trial Examiner Ruckel: He said what?

The Witness: That the company——

Trial Examiner Ruckel: He said what in reply to that? [305]

The Witness: You have the general idea. [306]

* * *

Q. What was your purpose in joining the group?

Mr. Ernst: I object to it as immaterial.

Trial Examiner Ruckel: She may answer.

A. Well, due to the conditions for the past week

(Testimony of Sylvia Pottle.)

at Globe, I mean the discharge of the junior employees against our wishes, and then the ultimate discharge of Chuck Jones, I felt that my position was insecure, besides the unjustness of Chuck Jones' discharge. [309]

* * *

Cross-Examination

By Mr. Ernst:

Q. In the course of that conversation with Mr. Bash, did he ask you to come back to work?

A. No. On the contrary, he told me that as much as he would like to see me back there, he couldn't possibly hire me back. As a matter of fact, he thought that it would be against the law for him to hire me back.

Q. He talked to you for 40 minutes over the phone? A. 40 minutes. [313]

Q. And what was the general gist? What was he trying to get over?

Trial Examiner Ruckel: What was she trying to get over to him?

Mr. Ernst: Trying to get over to her, as far as she could tell.

A. I understood that he was quite sorry that the whole thing had started.

Q. (By Mr. Ernst): He was in a sense apologizing for what he had done?

A. That is right, apologizing to me for what had happened.

(Testimony of Sylvia Pottle.)

Q. And, as I understood, he read you the letter to try to tell you why he had started this?

A. Well, I don't know what his purpose in reading the letter to me was. After all, I just worked there like everybody else. I imagine his purpose was——

Trial Examiner Ruckel: We don't want your imagination.

Q. (By Mr. Ernst): What did he say about his purpose?

A. Well, I think I have put it on the record. He said that if he had known what the results would be, if he had known what a bombshell he would have put on the thing, he never would have started it and sent that letter in, in the first place.

Q. When was this telephone conversation?

A. It was approximately 8:30 p.m. I remember, because I was on my way to the show the following night. [314]

Q. January 22nd, Saturday?

A. I believe it was a Friday night, wasn't it? Friday night.

Q. Friday is the day when all of these occurrences took place.

A. Was it on a Friday?

Q. Yes.

A. The day I went back to work? Well, then, it happened the following night, Saturday.

Q. On Saturday night?

A. That is right.

Q. At 8:30 p.m. Saturday night, January 22nd?

A. Yes.

Q. Now, did Leo Bash talk to you at all per-

(Testimony of Sylvia Pottle.)

sonally and directly in the afternoon of the 21st?

A. What are you referring to? What time.

Q. Friday, when this group were around him and talked about getting Jones back to work?

A. I don't believe Leo saw me until he came back from the outer office, which was the administrative office. I mean he came from that direction. I don't know whether he was in the men's room or the administrative office.

Q. He came into the operating room?

A. He came into the operating room.

Q. And previous to that he had been——

Trial Examiner Ruckel: Don't both all talk at once. [315] You asked her a question. What is the question you are asking her, when she saw Bash that afternoon? Is that the question?

Mr. Ernst: I can't recall now.

Mr. Brotsky: Did Bash talk to her when the group was around him. She answered that he didn't see her until he came back from the outer office.

Mr. Ernst: I think that the record can stand. I don't trust your recollection, Mr. Brotsky.

Trial Examiner Ruckel: Ask her another question.

Q. (By Mr. Ernst): Now, at 4:15, as I understand it. Mr. Risley talked to you and asked you to come and join the group?

A. He informed me as to what had happened and asked me if I would join the group.

Q. And at that time he gave you his version of the discharge of Chuck Jones?

(Testimony of Sylvia Pottle.)

A. After I asked him what the reason was.

Q. What the reason for the group was?

A. After I asked him what the reason for Chuck's discharge was.

Q. And he then told you the version and then you said that you would join the group, is that correct?

A. Well, yes. Well, the words I used were, "I will be right over."

Q. Previous to that time had the group been there and talking to Leo Brash? [316]

A. I did see a few people around. I was a little bit busy. I came over at four o'clock and at four o'clock took over. My back was towards the group. I don't know what was going on until I heard Leo Bash's voice.

Q. And then it was after you heard Leo Bash's voice, that Bruce Risley came over, is that correct?

A. That is right.

Q. And when you joined the group, was Bash there? A. No, he wasn't.

Q. And then, as I understand, you were with the group a few minutes and then Bash came into the operating room from outside?

A. That is right.

Q. And did he talk to you?

A. All he said was, "You too, Sylvia? I thought you had better sense than that."

Q. What did you say to that?

A. I said, "Well, Leo, give me a reasonable excuse for all this."

(Testimony of Sylvia Pottle.)

Q. And did he give you any excuse or reply to you at all?

A. No. That was the last I spoke to him until we discussed our discharge.

Q. On the telephone? A. No, heavens no.

Q. What do you mean until you discussed [317] it?

A. Until I was fired by him. That is the last words he spoke to me until I was fired.

Q. In between did he ask you to go to work again?

A. Yes. That was just before he told us we were fired. He pointed to me and said, "Will you go back to your position?"

Q. What did you say?

A. I said, "When Chuck Jones is reinstated."

Q. And is that substantially what was said back and forth to all of the employees there at that time?

A. That is right. I think I added one more thing. I think I added, "Or a reasonable excuse for his discharge."

Q. Then when Bash said, "You are fired," what did you do?

A. Well, all of the group walked into Mr. McPherson's office directly.

Q. You walked directly into—what is it, sort of across the hall into the room on the other side of the hall?

A. Yes, across the hall to the administrative office.

(Testimony of Sylvia Pottle.)

Q. And when you got over there, did you ask for Mr. McPherson?

A. Well, Mr. McPherson, as I recall, came towards us.

Q. He happened to be coming to you or, at least, he was coming towards you when you were coming in the door?

A. I can't recall. He was there. That is all I know.

Q. Now, were you the first person to speak to McPherson? A. I wasn't.

Q. Did you spend much time there with him? How long were [318] you there with him?

A. It couldn't have been over a period of between five and ten minutes.

Q. Five or ten minutes?

A. I don't think it was ten. It was closer to 5 to 7 minutes.

Q. Did McPherson talk to you at all?

A. He didn't talk to me.

Q. He didn't talk to you at all?

A. No. I did all the talking.

Q. Now, did anyone ask Mr. McPherson why Bash had fired Jones? A. I did.

Q. Why Bash had fired Jones?

A. I did. I asked him.

Q. Did you ask him why Bash had fired Jones?

A. I didn't ask him why Bash had fired Jones. I asked Mr. McPherson to give us—well, the conversation was that Hinde was the first one to talk and he said, "Leo fired us." And Mr. McPherson said, "That is right." [319]

(Testimony of Sylvia Pottle.)

And then I said a few words and in the course of that conversation I asked Mr. McPherson if he would please give us a reasonable excuse for Chuck Jones' discharge, since we couldn't accept the fact that he was incompetent, having worked with him so closely for that time.

Q. Did he say that he was discharged because he was incompetent?

A. Mr. McPherson didn't answer me. [320]

* * *

Q. (By Mr. Ernst): Mrs. Pottle, when you were talking to him, did Leo Bash ask you to come back at that time? A. Oh, no, no.

Q. He gave no indication of that at all?

A. No, not that he wanted me to come back to work, no.

Q. He did say, though, if you were wise, you would get out of this while the getting was good?

A. That is right. We were talking about the Union.

Q. And he didn't suggest that if you got out of it, you could come back to work? [321]

A. No, no. I don't remember him suggesting that at all.

* * *

Redirect Examination

By Mr. Berke:

Q. I am not sure whether you testified about this or not. Did you get your final pay check in the mail?

A. Yes, I did.

(Testimony of Sylvia Pottle.)

Q. And I show you General Counsel's Exhibit 10 and ask you if you received that in the mail, too, or one similar to that?

A. That accompanied my check.

Mr. Ernst: If you want to simplify things, I am willing to stipulate that all the checks went out and what went with them was one of those notices.

Mr. Berke: I accept the stipulation.

Trial Examiner Ruckel: The record will [322] so show.

* * *

MALCOLM G. PARKS

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Berke:

Q. Will you give the reporter your full name and address, Mr. Parks? [325]

A. Malcolm G. Parks, 1840 Sunnydale Avenue, San Francisco.

Q. Were you ever employed by Globe Wireless?

A. Yes, I was.

Q. When were you first hired?

A. September of 1946.

Q. And when did you last work there?

A. My last shift was on January the 20th, 1949.

Q. Did you work continuously from September, 1946, to January 20, 1949? A. Yes.

(Testimony of Malcolm G. Parks.)

Q. Were you a member of any union when you were hired at Globe?

A. I got my job through the Union. I wasn't actually a member. I immediately joined the Union, though.

Q. That is, you joined the Union after you became an employee of Globe? A. That is right.

Q. What Union was that?

A. ACA, CIO, Local 9.

Q. Did you remain a member of that Union throughout your employment at Globe?

A. Yes. [326]

* * *

(The documents heretofore marked General Counsel's Exhibit No. 11 for identification, was received in evidence.)

GENERAL COUNSEL'S EXHIBIT No. 11

(Copy)

Oct. 6, 1948

To the Staff of Globe Wireless, Ltd.

The National Labor Relations Board has advised the Company today, October 6, 1948, that in the election held on September 29, 1948, no union received a majority of votes cast. Under the circumstances, there is no Union which has been lawfully certified as the proper collective bargaining representative of our employees, the question has arisen as to whether the rejection of the Union appearing on the ballot

(Testimony of Malcolm G. Parks.)

should be interpreted by this company as an authorization of a union not appearing on the ballot. The Company makes no such concession.

The policy of the company previously stated is reaffirmed:

1. No changes in the wages, hours and working conditions to the detriment of the employees of the company are contemplated.

2. The Company is ready and willing to bargain collectively with a union whose officials have complied with the requirements of section 9 of the National Labor Relations Act, as amended, and which has been certified by the National Labor Relations Board as the lawfully authorized collective bargaining agent.

/s/ NEIL D. BROWN.

NDB:MG

Received July 27, 1949.

Q. (By Mr. Berke): After that notice, General Counsel's Exhibit 11 appeared on the bulletin board, was there any action taken by your committee with respect thereto?

A. We took up a couple of other grievances with the management.

Q. Whom did you meet with and when?

A. It was probably October 20th, somewhere around there in that approximate time, with Mr. Brown and Mr. McPherson, and I believe that is the one that Mr. Boatwright was present at.

(Testimony of Malcolm G. Parks.)

Q. That is, General Boatwright who has been referred to here by others? A. That is right.

Q. What was that meeting about?

A. Mainly concerning the combining of APO's, or the point to point operators with APO's, performing the same duty, and the shortened work week. [330]

GENERAL COUNSEL'S EXHIBIT No. 12

November 6, 1948

To the Staff of Globe Wireless Ltd.

When the Globe-ACA agreement terminated August 15, 1948, the Company adopted the policy and advised employees that wages, hours and working conditions of the expired contract would be maintained, so far as practicable, until a bargaining agent has been certified by the NLRB. The Company has met its obligations.

On the other hand, some employees have taken advantage of the above policy to the extent that a situation now prevails which is inimical to the Company's interests and employees as a whole. This situation is exemplified by the statement headed, "Union Management Meeting," November 3, 1948, which purports to convey to Globe employees the results of a meeting on that date between certain members of the operating and administrative staffs of the Company.

In general, the subjects listed were covered in the meeting, but not as outlined in the above report,

(Testimony of Malcolm G. Parks.)

which implied recognition by the Company of some union at the present time, attempts to put the Company at a disadvantage, and differentiates between certain groups of employees present, belittling one against the other.

The first fallacy is the heading, "Union-Management Meeting," which it was not, because the Company recognizes no union at this time and will not do so until one has been properly certified by law. Secondly, the "Union" contended nothing, took up nothing, and discussed no subject since the "Union" was not present. The meeting was between a total of ten Globe employees and no union was involved.

In the report are other discrepancies as to content, continuity and intent, but it is not the purpose of this notice to refute them.

This is to advise that:

1. The Company will not recognize any shop steward, shop chairman, shop committee, nor any group purporting to represent employees in collective bargaining unless such representatives are designated in accordance with the National Labor Relations Act.

2. The Company will not infringe upon any employee's right to engage in Union activities, but failure to perform duties on the job remains a cause for discharge.

3. Whenever necessary, the Company will meet with any employee to discuss subjects

(Testimony of Malcolm G. Parks.)

relating to his wages, hours and working conditions.

/s/ NEIL D. BROWN.

Q. (By Mr. Berke): Do you recall the discharge of Chuck Jones? A. Yes, sir.

Q. Were you present and working on the day that it took place?

A. No, I was at a scheduled Union meeting for the entire [336] Globe shop at the Union Hall on my day off, Friday, January the 21st, 1949, and at 1:30 in the afternoon Chuck came down and notified us that he was fired.

Q. Was this meeting that you attended a regularly scheduled meeting, or was it one called especially to discuss Mr. Jones' discharge?

A. No, this was scheduled, I believe, the preceding Tuesday for the purpose of what we should do in the matter of taking up grievances with the Company.

Q. And you went to this meeting at 1:30 on the 21st? A. That is right, that is right.

Q. And you say Mr. Jones was present at the meeting? A. Yes.

* * *

Q. (By Mr. Berke): You say Mr. Jones stated that, or notified [337] you people that he was fired, is that right?

A. That he was fired. We said, "How come? What was the reason?"

(Testimony of Malcolm G. Parks.)

Trial Examiner Ruckel: Never mind that. What did you do as a result of that?

The Witness: We discussed the matter, in that "Is Chuck going to be the first man that they pick off, and you and I next," that is concerning the entire shop. So we decided that we should go down there and protest the case in that there was no good legitimate reason for him being fired, that we had heard so far, so we decided to talk to the management, and get a reason for his being fired, in other words, protest his being fired.

Q. (By Mr. Berke): Who was the spokesman for him? A. Myself.

Q. And was anyone to accompany you?

A. Mr. Jones.

Q. And what were you to ask, and who were you to see?

A. We were going to our immediate superior supervisor, which was Mr. Bash at the time, and ask him, make a formal protest in his firing, or get a good reason for his being fired.

Q. Were you going to ask for Mr. Jones' reinstatement? A. That is right.

Q. And did you, pursuant to that, go to the Company's offices and see Mr. Bash? [338]

A. At 4:15 that same afternoon Mr. Jones and myself walked into the operating room, and Leo was relatively close to the door, I walked up to him and says "I understand Chuck Jones has been fired, I am here to make a formal protest," and that "He should be reinstated."

(Testimony of Malcolm G. Parks.)

Q. What did Mr. Bash say?

A. Mr. Bash made the statement that he didn't fire him; he suspended him.

Q. Did he say who fired him?

A. Well, he said he suspended him. I said, "Well, can we get him reinstated?" And Mr. Bash says, "I have nothing—I have no authority to reinstate; he is suspended."

Q. Was Mr. Jones standing alongside of you?

A. Right beside me, yes, possibly a little to the rear.

Q. Did any of the other people working on the shift at that time gather around you?

A. At that time practically all of the operators came up to help protest the case.

Q. What operators, on what watch or shift?

A. That was the operators on the 4:00 to mid watch.

Q. Do you know the names of those people, as you can recall them?

A. I can remember some of them, yes.

Q. Well, will you give those that you recall?

A. Bruce Risley, Sylvia Pottle, Rudy Niemi—— Niemi,—— [339]

Mr. Ernst: I have no objection to them leading the witness on the number of names of these people if it would speed it up any.

Mr. Berke: Oh, fine!

The Witness: As I remember the number——

Q. (By Mr. Berke): Viola Williams, was she there? A. Viola Williams is another one.

(Testimony of Malcolm G. Parks.)

Q. What about Pauline Smith, was she there?

A. Yes, sir.

Q. And Al Hinde, was he there? A. Yes.

Q. Did any of those people that gathered around participate in your discussion with Mr. Bash?

A. As I remember it, there was pretty much of a chime in from each individual, that they——

Q. Do you remember what they said?

Mr. Ernst: Excuse me. I wonder if I could have that answer read back?

Trial Examiner Ruckel: Just a minute. Pretty much of a what?

Mr. Berke: "Chime in."

The Witness: That they wanted to have Chuck Jones reinstated on his job, or else a good reason for his being fired.

Q. (By Mr. Berke): What did Bash say in response to their request? [340]

A. "Get back to your positions."

Q. Did you see Bash do anything while you were standing around there conferring with him, or attempting to confer with him?

A. There was a lot of hand throwing and gestures, but—and we also asked to meet with somebody that had the authority to reinstate Charles Jones.

Q. Whom did you make that request of?

A. Mr. Bash.

Q. What did he say to that?

(Testimony of Malcolm G. Parks.)

A. He had no—he gave us no authority to leave the operating room.

Q. Now, for how long did you remain around his desk? A. Well, roughly an hour.

Q. What occurred after that?

A. He, as I remember, as I remember, he went across the—out of the operating room. When he came back he took all of our time cards and stamped them out.

Q. You saw him do that, did you?

A. Yes, sir.

Q. Did he say anything to you?

A. Not right—then he came over and he says, as I remember, he offered us the cards, he says, “Go back to the circuit.” We told him we would go back to the circuit when Chuck Jones was reinstated, or a good reason given for his being fired.

Q. What did he say to that?

A. He said, “You are fired.”

Q. Did he say that to the group?

A. That is right.

Q. At large? A. Yes.

Q. Did anything else occur that day after that?

A. Well, then we immediately went across into the main offices to find out for sure, to get the—

Q. Now, who did you mean by “we”?

A. The entire group that was told were fired.

Q. All the people that you have named?

A. That is right, and this was my day off, so I was fired on my day off.

Q. And when you—

(Testimony of Malcolm G. Parks.)

Mr. Ernst: I ask that the last statement be stricken as not responsive, and as a conclusion.

Mr. Berke: Oh, I don't know.

Trial Examiner Ruckel: It may stand.

Q. (By Mr. Berke): Now, you say you went across the hall. What was your purpose in going across the hall?

A. To confirm the fact that we were fired with one of the higher officials.

Q. Well, did you see one that was higher than Mr. Bash? A. Yes, sir. [342]

Q. Whom did you see?

A. We walked into the little ante-room, the waiting room that leads into all the main offices of the Company officials, the telephone operator was sitting right to the left of us, and I was standing right next there, I told her that we wanted to see Mr. McPherson, so she called Mr. McPherson, as I remember, and said, "There is a delegation out here to see you," so time went by, he finally came out of one of the other—not his own office, but one of the others, and eventually came over to us.

Q. And who spoke first?

A. The first words was from Al Hinde, who said, "Mr. Bash fired us."

Q. And what did Mr. McPherson say to that?

A. He says "That is right."

Q. Was there anything more said by anybody?

A. Well, each one of us, I don't—no, not "each

(Testimony of Malcolm G. Parks.)

one of us"—I asked him what the reason for firing us was. Mr. McPherson had no answer.

Q. He didn't say anything?

A. No. And then about that time Sylvia Pottle asked for permission to talk to him, and she carried on the conversation from there on.

Q. And do you remember what she said?

A. Mainly in the respect that we had appreciated our jobs, [343] had been happy on it, did not understand the cause for Chuck Jones being fired. What was the reason? Mr. McPherson had nothing to say. Part of the time he was nodding his head, but the rest of the time said nothing. Then somebody asked about the pay checks, and he said they would be mailed, so we considered that final and left the building.

Q. Did you later attend a union meeting?

A. Yes, at 8:00 o'clock that evening.

Q. That is 8:00 o'clock, January 21st?

A. That is right. That was the second section of this same meeting from the afternoon so that all shifts could attend one or the other meetings.

Q. This meeting too was a regularly scheduled meeting?

A. That is right; that is right.

Q. And was the matter of Mr. Jones' discharge discussed at that meeting also?

A. Yes, it was, not only his but the rest of us too.

Q. And those on the 8:00 to 4:00 shift?

A. That is right, that had already been fired.

(Testimony of Malcolm G. Parks.)

Q. Oh, I am sorry. I mean 4:00 to mid shift?

A. Oh, 4:00 to mid, that is right.

Q. Yes.

A. Yes, that is correct, because we weren't in there after 4:00 o'clock.

Q. What was decided at that meeting? [344]

A. We decided that two of us should go up there, and me being the shop chairman should be the spokesman again, go up and see if any Company officials were on duty at midnight there, and find out if there was any change in status toward the rehiring of all the employees fired, including Chuck Jones.

Q. And who was to be the spokesman?

A. Myself, and Al Hinde was to accompany me.

Q. And did you and Al Hinde go to the offices of the Company that evening?

A. Yes, soon after midnight we went in there. Mr. Bash was sitting up at his supervisor's desk. We walked over to him, and I said to Mr. Bash, "Has there been any change in policy toward the firing of Chuck Jones and ourselves this evening?" He says, "No." And the rest of the operators in the operating room came out to discuss the same thing, and we requested that we see some official that could rehire us.

Q. About what time was this?

A. Well, this was between 12:15 and 12:30 a.m.

Q. And that would be in the morning of January 22nd?

A. January 22nd, yes.

(Testimony of Malcolm G. Parks.)

Q. Who were the people that gathered around you on that occasion?

A. That was the entire mid watch. Let's see if I can remember them.

Mr. Brotsky: Did you say the entire mid [345] watch?

The Witness: The entire mid watch, yes. I don't remember names.

Q. (By Mr. Berke): All right, let's see if you recall. Was Lorraine Conger one of those?

A. Yes, sir.

Q. John Gyuresik?

Mr. Ernst: I would like to get them down. Will you hold it just a second until I catch up with you.

A. Rudy Niemi.

Mr. Ernst: O.K. Conger.

Q. (By Mr. Berke): John Byuresik?

A. Yes.

Q. Virginia Kelso? A. Yes, sir.

Q. Jesse McLin? A. Yes, sir.

Q. Homer Mulligan? A. Yes, sir.

Q. Louis Pena? A. Yes, sir.

Q. Violet Leach?

A. I am pretty sure she was there, yes.

Q. What is your answer on that?

A. Yes, she was there.

Q. David Sheaffer? [346]

A. Yes, he was there at midnight.

Q. George Rosengren? A. Yes, sir.

Q. And did those people participate in your discussion with Mr. Bash?

A. Yes, they all from one time to another made

(Testimony of Malcolm G. Parks.)

the statement that they would like to have Mr. Jones rehired, or a good reason given for his being fired, and if he was not able to answer it we would like to speak to some official that could, that had the authority.

Q. Was any reference made to those who had been on the 4:00 to mid watch who had been discharged?

A. That was concerning Chuck Jones that we were trying to get reinstated, including ourselves, that was previously at 4:15 fired, or after 4:15.

Q. You had talked with Mr. Bash about the others as well as about Chuck Jones?

A. That is right, yes.

Q. What did Mr. Bash say to your request and that of the group?

A. I made the statement, I says, "Well, I guess there is nothing we can do about it." Then he says, "Yes, there is something we can do," and he walked out of the room and came back with a building guard, and Al Hinde and myself left the building. [347]

Q. Did he say anything to the guard when he came back with him?

A. I never heard anything said.

Q. Did the guard accompany you out of the building?

A. Yes, sir.

Q. What time was that?

A. 12:30 a.m.

Q. And where were the rest of the group that had gathered?

A. Sitting around Mr. Bash's desk.

(Testimony of Malcolm G. Parks.)

Q. Do you know whether or not Mr. Bash usually worked at midnight?

A. I never saw him work that in the two years that I was there. [348]

* * *

Cross-Examination

By Mr. Ernst:

Q. This letter that accompanies Exhibit 2 refers apparently to a previous meeting between you and Mr. McPherson? [350] A. That is right.

Q. Was that an oral meeting? A. Yes.

Q. How did you arrange that meeting?

A. By telephone.

Q. You called him on the telephone and asked him if you could meet him? A. That is right.

Q. And was it arranged without trouble?

A. He told me that we could come on Friday—I won't say Friday—about two days later, he said that he would meet with me, and then on that day he called me early in the morning about 10:00 o'clock in the morning and told me that it would have to be postponed.

Q. Didn't you want the meeting originally with Mr. Brown? A. That is right.

Q. And Mr. Brown was ill at the time?

A. That is right.

Q. And then it had to be postponed over the weekend and Mr. Brown was still ill, so you met with Mr. McPherson?

A. That is right. He made the statement that

(Testimony of Malcolm G. Parks.)

Mr. Brown's wishes was for the meeting to go ahead.

Q. And at the conclusion of the meeting, you asked for a meeting with respect to the lay-off, or did Mr. McPherson ask for that meeting? [351]

A. As I recall, he made the statement that there was no change in policy and he would not meet with anyone representing the Union.

Q. Well, from the first letter, the first paragraph of your letter of January 5th, apparently he asked you to let him know what was the opinion of the employees on the short work week or lay-offs?

A. That is right.

Q. And what I wondered was, did Mr. McPherson bring up this matter or did you bring it up?

A. Mr. McPherson actually made the meeting with me. When I walked in and sat down, he said, "What do you want to know?" And I said, "I want to know, or I am here to find out what you have to say, as you called me in." Yes, that was the case, because we had already asked for a meeting with Mr. Brown and they would not meet with a Union representative, so they finally agreed to meet with me alone.

Q. And that was this meeting of January the 3rd?

A. Yes.

Q. I thought you said earlier that you had telephoned McPherson and asked for—

A. Apparently that was a previous meeting.

Q. Did you then on quite a few occasions during the month that you were shop steward, call McPherson and ask for a meeting? [352]

(Testimony of Malcolm G. Parks.)

A. Yes. [353]

* * *

Q. Now, at 12:00 o'clock midnight was it usual for Mr. Brown [356] to be present? A. No.

Q. Or for General Boatwright to be present?

A. No.

Q. And it wasn't usual for Leo Bash to be present? A. That is right.

Q. Was it usual for any person in the hierarchy of the Company above the watch supervisor to be there at that time?

A. As far as people across the hall, no, that is right. It wasn't the custom.

Q. In other words, the top person present at the time would be supervisor on watch?

A. That is right.

Q. And at that time the regular supervisor on watch was away ill, was he not?

A. I believe that is correct, Mr. Shanks.

Q. And the acting supervisor was Mr. Rosengren?

Mr. Brotsky: When you say, "at that time," you have reference to what date?

Mr. Ernst: I have reference to the shift that started at midnight or 12:01 a.m. on January 22, 1949.

Q. (By Mr. Ernst): I am assuming that you are referring to the same time? A. Yes.

Q. Now, was Mr. Rosengren one of the ACA members? [357] A. Yes.

(Testimony of Malcolm G. Parks.)

Q. Was he present at the meeting at 8:00 o'clock?

A. I don't remember.

Q. Now, did you during your experience as chairman of the shop committee on any occasion seek a meeting with Mr. McPherson or Mr. Brown or General Boatwright through the acting supervisor on the midnight to 8:00 a.m. shift or the supervisor on that shift?

A. I don't believe I did. [358]

* * *

Q. (By Mr. Ernst): Did the meeting in the afternoon discuss the question of who the group was going to see?

A. Yes. Mr. Bash was our immediate supervisor.

Q. The decision was made to see Mr. Bash?

A. Yes.

Q. Did you discuss seeing Mr. McPherson or Mr. Brown or General Boatwright?

A. I'm sorry, I didn't hear your question.

Q. Did you discuss seeing Mr. Brown or General Boatwright or Mr. McPherson?

A. Not by name, but somebody that had authority to give us a decision.

Q. Well, I mean, did you, when you were discussing whom to see, when you and Mr. Jones were to call on the Company?

A. All I remember was the decision to see Mr. Bash. [359]

* * *

What did you do during the period between the

(Testimony of Malcolm G. Parks.)

conclusion of the meeting at 3:00 o'clock and the time that you arrived at the office of the Company?

Mr. Brotsky: I object on the ground that it is irrelevant and immaterial.

Trial Examiner Ruckel: What is relevant about that?

Mr. Ernst: I am trying to go into the timing of their arrival, and it seems to me there was no reason why they couldn't have gone before 4:00 rather than after 4:00.

Mr. Brotsky: What relevance has that?

Mr. Berke: How material is that? The point is what they did rather than what they could have or might have done.

Trial Examiner Ruckel: 4:00 o'clock is a busy time, is that the point? Is that the busiest time, 4:00 o'clock?

Mr. Ernst: Well, it is busy after that period of time and the new shift came on at 4:00 o'clock and various other things that might go into their question of the decision to go before 4:00 or after 4:00.

Mr. Berke: Is the witness testifying now? [360]

Trial Examiner Ruckel: I am going to sustain the objection.

Mr. Ernst: Mr. Examiner, would that ruling apply to any questions that I had as to the reason why they selected coming in at 4:00 or shortly after 4:00, rather than some earlier time?

Trial Examiner Ruckel: Well, I do not know. I don't quite understand what your theory is. I asked

(Testimony of Malcolm G. Parks.)

whether that was your busiest period and apparently it was not, from what you said.

Mr. Ernst: No, the period from about 4:00 or 4:30 until 8:00 is the busiest on the Manila circuit but you have other busy periods on other circuits.

Trial Examiner Ruckel: Well, you could have asked why didn't they come in at 3:00 o'clock rather than 4:00. Is one time more critical in the operation of the Company rather than some other time?

Mr. Ernst: Well, I think here it related to the expectation that the other people would be called into the thing and that the delegation wasn't to be only Mr. Parks and Mr. Jones.

Mr. Berke: Well, what difference does that make?

Trial Examiner Ruckel: Well, that is clear in the record. It is clear they all joined in.

Mr. Berke: So far the evidence is that they have.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): Was it the decision at the meeting that all [361] of the persons there would join with you in making the protest?

A. Of Mr. Jones and myself, talking to Mr. Bash, could not get anywhere, yes.

Q. Now, as I recall, somebody here testified that the decision was made that you and Mr. Jones were to lodge a formal protest with Mr. Bash, is that correct?

A. Yes.

Q. Now, what actions were you instructed to take in the course of making your formal protest?

Mr. Brotsky: If any?

(Testimony of Malcolm G. Parks.)

A. What action? I don't understand what you mean.

Q. (By Mr. Ernst): Were any more detailed instructions given to you than the words, "You and Chuck Jones shall make a formal protest"?

A. No.

Q. Now, on how many occasions before had you made a formal protest to the Company?

Mr. Berke: I object to that as irrelevant, immaterial, incompetent, and has no bearing on the issues. [362]

Q. You, I understand, asked on behalf of the group, that Mr. Jones be reinstated?

A. That is right.

Q. And you said that practically all of the people who came up chimed in. Did they ask essentially the same action of Mr. Bash?

A. That is right.

Q. Did Mr. Bash ever offer or ask the people to go back to [364] their jobs?

A. After he had stamped our time cards and came over and offered them to us, he said, "You can go back to your circuit," or something along that line, and we told him the same answer, that we wanted Chuck Jones reinstated or a good reason for his being fired.

Q. And that you wouldn't go back to work until he was?

A. That is right. [365]

* * *

(Testimony of Malcolm G. Parks.)

Redirect Examination

By Mr. Berke:

Q. Did Mr. Bash have any supervisors under him?
A. Yes.

Q. About how many, do you know?

A. One scheduled supervisor on each watch.

Q. That would be about——

A. Three. [375]

* * *

Q. (By Mr. Brotsky): In your experience as Shop Chairman and a steward did you negotiate grievances directly with Leo Bash on any occasions?

A. Yes. [377]

* * *

Recross-Examination

By Mr. Ernst:

Q. You stated that you asked Leo Bash to arrange meetings for you with management?

A. Yes, that was prior to the expiration of the contract.

Q. Yes, prior to the expiration of the contract?

A. That is right.

Q. For how long prior to the expiration of the contract were you chairman of the Shop Committee?
A. The early part of July.

Q. From the early part of July until the middle of August?
A. Yes.

Q. And the times that you asked Mr. Bash to arrange meetings were all prior to August 15th then?
A. Yes. [378]

* * *

(Testimony of Malcolm G. Parks.)

Mr. Ernst: It, as I recall, indicates considerable of this background history that Counsel for the General Counsel raised by his direct examination of this witness, and picks up the detail of that and what happened during this interim period from, I think it was October 6th or so, when this first document was referred to, and continuing up until the date of this document.

Trial Examiner Ruckel: I am going to admit it for the limited purpose of showing, if it does show, the activity of this witness in comparison with the activity of other employees, including Mr. Jones, and it is denied for all other purposes.

(Thereupon, the document above referred to as Respondent's Exhibit No. 5 and marked for identification, was received in evidence.) [382]

* * *

PAULINE GERTRUDE SMITH

a witness called by and on behalf of the General Counsel of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Berke:

Q. What is your full name, please?

A. Pauline Gertrude Smith.

Q. Where do you live, Miss Smith?

A. 26 Leona Terrace, San Francisco.

(Testimony of Pauline Gertrude Smith.)

Q. Were you ever employed by Globe Wireless?

A. Yes, I was.

Q. When were you first hired?

A. Approximately September 27 of '48.

Q. In 1948?

A. Yes. Wait a minute. 1947. Sorry.

Q. Is that correct now, September 27, 1947?

A. 1947 is right.

Q. When were you last employed by that company?
A. January 21, 1949.

Q. What position did you hold on January 21, 1949?

A. I was classified as a teletype operator, receiving the [388] pay of a teletype operator, but I did not do teletype operator's work.

Q. What work did you do?

A. Traffic clerk.

* * *

Q. Were you a member of any union when you first went to work at Globe?
A. No.

Q. Did you join any union after you became employed there?
A. Yes.

Q. What union? [389]

A. ACA, CIO, Local 9.

Q. And for how long did you continue to be a member of that union?

A. Until January, until the present date. [390]

* * *

Q. Do you recall a union meeting that was scheduled for January 21, 1949?
A. Yes, sir.

(Testimony of Pauline Gertrude Smith.)

Q. Did you attend that meeting? A. Yes.

Q. At what time? A. 1:30.

Q. In the afternoon? A. Yes.

Q. And did a matter concerning Charles Jones come up at that meeting? A. Yes.

Q. What was that matter about?

A. I learned that Chuck Jones had been [391] fired.

* * *

Q. (By Mr. Berke): Did you go to the office of Globe later that day? A. At four o'clock.

Q. And did you go to work at four o'clock?

A. Yes.

Q. Now, there has been some testimony here about Mr. Parks and Mr. Jones having made certain representations to Mr. Leo Bash and a group of people on the four o'clock shift having gathered around in support of whatever Mr. Parks and Mr. Jones were discussing with Mr. Bash.

Were you one of that group? A. I was.

Q. Can you tell us why you gathered with the group, or why you joined it?

A. When Mr. Parks and Mr. Jones first came in I could overhear the conversation. Mr. Parks made the remark to Mr. Bash that he wanted to formally protest the firing of Chuck Jones. I heard Mr. Bash say, "Oh, you do, do you?" The conversation was not progressing very well, so I decided to join them.

Q. And was your purpose in joining to support

(Testimony of Pauline Gertrude Smith.)

the protest, or the attempt to discuss the matter of Mr. Jones' discharge? A. Right. [392]

* * *

Q. (By Mr. Berke): Tell us whether or not your employment was terminated that day with Globe? A. On the 21st?

Q. Yes. A. It was.

Q. How did that come about?

A. Mr. Bash told me that I was fired.

* * *

Trial Examiner Ruckel: Mr. Bash told you you were fired. Give us his words as near as you can.

The Witness: He said, "This humiliates me beyond words but you people are fired. Now get out."

Trial Examiner Ruckel: Is that all he said, as far as you recall?

The Witness: That is all.

Q. (By Mr. Berke): What did you do after that?

A. The group immediately went to Mr. McPherson's—not to his office but to the Executive Department.

Q. Were you in that group? A. I was.

Q. Tell us whether or not you heard Mr. McPherson say anything [393] to the group or to anyone in the group.

A. The conversation started out by Al Hinde making the remark to Mr. McPherson, "Leo Bash has fired us." And McPherson said, "That is right."

Someone asked, I don't know who, "Why?"

(Testimony of Pauline Gertrude Smith.)

McPherson replied, "This Company received an ultimatum approximately at 4:20 that you people refused to work unless Chuck Jones was reinstated."

He further stated that this Company cannot tolerate such action.

Q. (By Mr. Berke): Was there anything else said that you can recall?

A. No, nothing else that I recall.

Q. What happened then?

A. If I recall correctly, Sylvia Pottle took the stand to speak.

Q. She addressed Mr. McPherson, did she?

A. Right.

Q. After she spoke, were there any others who spoke? A. Not that I remember.

Q. Well, what happened then?

A. You mean you want the conversation or just what happened?

Q. No, what happened?

A. Everyone dispersed, left the building.

Q. Where did you go? [394]

A. Miss Pottle and I returned to the operating room, to the cloak room.

Q. And what did you go to the cloak room for?

A. For our wraps and clean out our lockers.

Q. Did anything occur in there?

A. Mr. Bash followed us in and spoke to Miss Pottle.

Q. Did you hear what he said to her?

(Testimony of Pauline Gertrude Smith.)

A. I did.

Q. Where were you standing at the time?

A. Practically three feet from her.

Q. And could you hear distinctly what was being said?

A. Very distinctly.

Q. Will you tell us what was said and who said it?

A. Mr. Bash said to Miss Pottle, "Sylvia, I am very surprised that you have joined with the wrong outfit. Why don't you come over on the Company's side?"

He says, "You know we have just got to get rid of these Communists in this office."

To this, Miss Pottle replied that she had observed no Communist activity and she thought he was making a very broad statement with no evidence and she told him that until a better Union came along, that she would stick to the ACA.

Q. Did you hear anything else?

A. Not that I recall.

Q. Did Mr. Bash make reference to any other Union? [395]

Mr. Ernst: I——

Trial Examiner Ruckel: She may answer. Did he mention any other Union?

The Witness: Yes, he did.

Q. What did he say?

A. He told her that at that very moment we could have another Union in the office, all we had to do was to make such a suggestion to the front office, that we could have any Union that complied

(Testimony of Pauline Gertrude Smith.)

with the non-Communist affidavit, preferably the IBEW.

Q. Do you recall anything more that was said?

A. Nothing more.

Q. What did you do then?

A. Miss Pottle and I left the building.

Q. Did you subsequently get your pay check?

A. Approximately four or five days later I received my pay check in the mail.

Q. Now, was a picket line established at the Company premises after that? A. It was.

Q. And did you join the picket line?

A. I did. [396]

* * *

Q. (By Mr. Berke): On that occasion while you people were gathered around Mr. Bash did you see Mr. Bash leave at any time and go into any other office? A. He left the room twice. [397]

Q. Can you tell us——

A. He left the operating room.

Q. Can you tell us about what time the first time was that he left?

A. I would say approximately 4:35 the first time.

Q. Did you see where he went on that occasion?

A. No, no.

Q. About how long was he gone?

A. I would say 7 minutes.

Q. And when was the next time?

A. Around 5:00 o'clock.

Q. Did you see where he went then?

A. No.

Q. Do you know how long he was gone?

(Testimony of Pauline Gertrude Smith.)

A. Approximately 7 or 10 minutes.

Q. What took place after he returned the first time?

A. He went to the teletype section, called to Mr. McDowell, who was the Supervisor on that shift, he said, "Say, Mac, do you have anything for me to do?" Mac replied, "No, there is nothing to do."

Q. And what took place when he returned the second time?

A. He went to the time clock, gathered up the time cards of everyone present, stamped them out, he came to the group and offered the time card to each individual. He wanted to know if we wouldn't go back to work. [398]

Q. Was this before or after he had told you people that you were fired?

A. If I recall correctly, it was leading up to it. [399]

* * *

Q. (By Mr. Ernst): Now, then, you went into the operating room at 4:00 o'clock?

A. Right.

Q. When did you next see this Dolores Bruce, the Suddarth girl, and Port; was that the third one?

A. Right.

Q. When did you next see them?

A. We were talking to Mr. Bash, we were having our group meeting.

Q. But when you were having your group meeting with Mr. Bash——

(Testimony of Pauline Gertrude Smith.)

A. They still were sitting in the cloak room and were watching us talking to Mr. Bash. [403]

Q. You could see them at that time?

A. Yes, sir.

Q. And did Mr. Bash go and talk to them?

A. No.

Q. What did the girls who were sitting in the cloak room next do?

A. They weren't next to anything, they were in the cloak room.

Q. What did they do after you saw them sitting in the cloak room while you and the other group were talking to Mr. Bash?

A. They were just sitting there until——

Q. Until what happened, that is what I wanted to know?

A. We had been sitting, we had been sitting for approximately 15 minutes, and all of a sudden I saw them coming out into the operating room, taking over positions. Who told them to go, or whether anyone told them to go I don't know.

Q. Now, during the period after you arrived you, as I understand it, started to do your regular work at 4:00 o'clock?

A. That is right.

Q. And how long did you continue doing your regular work?

A. I would say 20 minutes.

Q. About 20 minutes. And what time did Mr. Jones and Mr. Parks come in?

A. I would say 4:15.

Q. And did you notice them come in as soon as they came in? [404]

A. No.

(Testimony of Pauline Gertrude Smith.)

Q. How did it come to your notice that they were there? A. I heard their voices.

Q. You heard Parks and Jones' voice?

A. Speaking to Mr. Bash.

Q. I see. Then did you go over and join them?

A. Not immediately.

Q. When you joined the group, who else was around there? Were you one of the first to join the group, is what I am interested in. A. No.

Q. Who else was in the group when you joined it?

A. I don't recall anyone being in the group. We all joined in a more or less simultaneous manner.

Q. Had you discussed the possibility of joining such a group, when you were in the Union meeting at 1:30? A. Yes.

Q. And was it agreed that that was what you would do?

A. It was agreed that if Mr. Jones and Mr. Parks could not make a progressive conversation with Mr. Bash, that, if necessary, some of us would join in?

Q. You would join in the conversation?

A. Yes.

Q. And in your conversation you were going to join in by asking that Mr. Jones be put back to work? [405] A. Right.

Q. And what conversation occurred prior to the time that you joined in?

A. I heard Mr. Parks say to Mr. Bash, "I want to formally protest the firing of Mr. Jones."

(Testimony of Pauline Gertrude Smith.)

Bash's remark to that was, "Oh, you do, do you?"

That is all that was said.

Q. And then you joined? A. Right.

Q. And by that time others had already joined the group?

A. Hadn't already. We all joined simultaneously.

Q. At what time did that meeting with the Union at 1:30 terminate?

Mr. Berke: I object to that. Why is that relevant as to when it terminated? It has been gone into before and I don't see any materiality. Mr. Trial Examiner, whether they terminated four hours later or ten seconds later. How is it material to the issues here?

Trial Examiner Ruckel: Objection sustained.

Mr. Ernst: As I understand your ruling, Mr. Examiner, I will not be permitted to go into the timing of the meeting and the period between the time these people left the Union meeting and came to the Company and what they did during the interim, and that is the case not only as to the 1:30 meeting, but also as to the 8:00 o'clock meeting? [406]

Trial Examiner Ruckel: Well, if you question the accuracy of her testimony as to the time that the group met and that she came to the office——

Mr. Ernst: No. I want to go into what happened after she left the meeting.

Trial Examiner Ruckel: I can see no relevancy except that it bears on the accuracy of the testimony as to the time of these other events.

(Testimony of Pauline Gertrude Smith.)

Mr. Ernst: That isn't my point. I have an entirely different point, which I think is entirely relevant.

Trial Examiner Ruckel: Well, would you care to state your point? I think you stated it yesterday.

Mr. Ernst: Yes, I did state it in substance yesterday. I want to go into the matter of whether they had time to go in and make their protest before they went to work rather than on Company time and what considerations led to their doing it on Company time rather than prior to going to work.

Trial Examiner Ruckel: Objection sustained.

Mr. Ernst: Just to speed this up, Mr. Examiner, you mean that, my statement as to my interpretation, both as to 4:00 o'clock and 8:00 o'clock? [407]

* * *

Q. Now, when you were with Mr. Bash around 5:15, your meeting broke up, is that right?

A. When he told us we were fired, the meeting didn't break up. We went directly to the main office.

Q. Then the meeting moved from Mr. Bash's office into the main office at about 5:15?

A. That is right.

Q. And prior to that time, as I understand your testimony, Mr. Bash came into the operating room from the hall, took the time cards, stamped them out, then came over to the group and did something

(Testimony of Pauline Gertrude Smith.)

with the time cards and made some statement. Now, what was the statement he made?

A. I told the statement before. He offered each one in the group his time card and said, "Now, get back to work."

Q. And did he do that individually to each one of the people [408] there? A. If I recall, yes.

Q. And do you recall what the answer you gave was, when he asked you that?

A. I told him that I would go back to work as soon as Chuck Jones was reinstated.

Q. Now could you tell me what the other people said at that time? A. I don't recall.

Q. Now, did immediately after that, he tell you that you were fired, after he had completed this conversation with the whole group?

A. I believe that is the way it was.

Q. Well, did you listen to this conversation during the whole period from 4:20, when you joined the group, or so, until 5:15? [409]

* * *

Q. What was Mr. Bash doing during the interim when he wasn't with you and when he wasn't outside the room?

A. He was trying to help with traffic.

Q. Now, at any time did you hear Mr. Bash say anything about the fact that he had not fired Chuck Jones? A. Yes.

Q. What did he say about that?

A. He said that he did not fire Chuck Jones, that some higher authority had.

(Testimony of Pauline Gertrude Smith.)

Q. Did he mention anyone's name?

A. I don't recall any names being mentioned.

Q. Did he mention General Boatwright's name?

A. I don't recall.

Q. Did anyone of the group respond to Mr. Bash's statement that he hadn't fired him?

A. Yes.

Q. What response was made?

A. They wanted to see the person responsible for firing Chuck Jones.

Q. What did Leo Bash say to that?

A. Leo Bash said that he had no intentions of bringing anyone into the operating room to see us.

Q. Did he say that you could go see him or that you couldn't [411] go see him?

A. Yes, I believe he did.

Q. You believe he said what, you could go see him?

A. We knew where their offices were. If we wanted to see them, we could go. [412]

* * *

Q. Now, at this 5:15 meeting with Mr. McPherson, did anyone ask him to discuss the matter of Chuck Jones' discharge?

A. I don't know that the term "discharge" was used.

Q. Well, what I am getting at is whether or not the meeting with McPherson was particularly with respect to the discharge of you and the other people in your group or whether it was directed to the discharge of Jones?

(Testimony of Pauline Gertrude Smith.)

A. It was particularly directed to the discharge of Jones. [414]

Q. It was related to that. Now, did Mr. McPherson give you any information, according to your recollection of that conversation, as to why the company discharged him?

A. Miss Pottle told him that she had been working with Chuck Jones long enough to know that he couldn't possibly be discharged for incompetence, that she refused to take that as an excuse, and asked McPherson for a better one. She didn't get it.

Q. She didn't get a better excuse, is that what you mean? A. That is right.

Trial Examiner Ruckel: Did she get any?

The Witness: She didn't get any.

Q. (By Mr. Ernst): In other words, according to your recollection, McPherson said nothing at all in response to Sylvia Pottle's request for some statement as to the reason for his discharge?

A. Right.

Q. Did you ever hear anything about a request that Chuck Jones practice; that is, on January 21st? A. That I heard about it?

Q. Did you on January 21st hear anything about a request to Chuck Jones that he practice?

A. Yes.

Q. When did you hear that?

A. I heard that directly from Chuck Jones himself at the [415] 1:30 meeting.

(Testimony of Pauline Gertrude Smith.)

Q. At the 1:30 meeting?

A. ACA union meeting.

Q. And did you hear of it at any other time?

A. No.

Q. Then when you were present at four o'clock and at 5:15, did you ask either Mr. Bash or Mr. McPherson as to whether Chuck Jones was right in reporting this matter of practicing?

A. No, I don't recall anything about that.

Q. Now, as I understand, you served on the picket line for sometime after? A. Right.

Q. At that time did you people hand out any leaflets? A. We did.

Q. You didn't happen to be one of the authors, did you? A. One of the what?

Q. Of the authors, the people who wrote the material that was put in the leaflets?

A. I didn't write it. I proofread it.

Q. And do you recall that your first bulletins, at least, were numbered "Lockout Bulletin No. 1, Lockout Bulletin No. 2"?

A. I don't recall whether they were that way or not.

Q. I will find one here in a second and show it to you.

Mr. Ernst: Counsel, I am going to show the witness this. [416]

* * *

Q. (By Mr. Ernst): Were these bulletins by the group of Globe employees who are the parties to this case? A. That is right.

(Testimony of Pauline Gertrude Smith.)

Q. As I understand, they represented the position of the group as to matters in dispute?

Mr. Berke: Just a moment. The best evidence of that would be the document itself.

Mr. Brotsky: Which speaks for itself.

Trial Examiner Ruckel: Objection sustained.

* * *

ALBERT E. HINDE

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: Your name, please?

The Witness: Albert E. Hinde, H-i-n-d-e, 2841 Sacramento Street, San Francisco. [423]

Q. (By Mr. Berke): Mr. Hinde, did you ever work for Globe Wireless? A. Yes.

Q. When were you first employed by the company? A. July 1, 1946.

Q. And when did you last work there?

A. January 21, 1949. [424]

* * *

Q. (By Mr. Berke): Were you a member of any Union when you first went to work at Globe?

A. Yes.

Q. What union is that?

A. ACA, CIO Local 9.

(Testimony of Albert E. Hinde.)

Q. And did you retain your membership when you went to Globe? A. Yes. [437]

* * *

The objection is overruled. You may answer. The conversation in the first part of September, 1948?

Mr. Ernst: I want to state on the record the nature of my objections, so that it will be in here.

Trial Examiner Ruckel: That is right.

Mr. Ernst: The objection is that these matters are irrelevant and immaterial to any issues before the Board, since apparently the General Counsel is now going into some unfair labor practice that occurred some time in September or alleged unfair labor practice that occurred some time in September of 1948. There is no charge filed with respect to any such unfair labor practice, the only charge that is in the record being a charge that refers to acts "that occurred on or about January 21, 1949."

The 1947 amendments to the Act say that the Board—that includes the General Counsel and the Trial Examiners are included in this—shall take no action with respect to an unfair labor practice unless a charge with respect thereto is filed and served within 6 months. [440]

There is no evidence in this record that any charge was filed with respect to an unfair labor practice or alleged unfair labor practice in September, 1948. It is now more than 6 months from September, 1948. On that ground the law prohibits

(Testimony of Albert E. Hinde.)

the Examiner or the General Counsel from taking any action with respect to such an unfair labor practice.

* * *

Trial Examiner Ruckel: Go ahead. What was your conversation the first week in September with Bash?

The Witness: I heard Mr. Bash say——

Trial Examiner Ruckel: Were you talking to him?

The Witness: No.

Trial Examiner Ruckel: Who was he talking to?

The Witness: Not at this time. He was talking to Miss Lorenzo, Miss Bruce and Miss Suddarth.

* * *

Trial Examiner Ruckel: You may answer.

The Witness: Mr. Bash said, "The Company will have nothing to do with the ACA. They are a bunch of Commies and fellow travelers."

Q. (By Mr. Berke): Did you participate in that? A. Yes.

Q. What did you say?

A. I said, "The people in this shop are the ACA. The ACA is good enough for me and I resent the Company trying to tell me what union I should belong to and how I should vote."

* * *

Q. (By Mr. Berke): Now, do you recall January 21, 1949? A. Yes.

(Testimony of Albert E. Hinde.)

Q. Did you attend a union meeting on that day?

A. Yes, a shop committee meeting.

Q. At what time? A. 1:30 p.m.

Q. And will you tell us whether or not the matter of the discharge of Charles Jones was discussed at that meeting? A. Yes.

Q. What time were you due to report to work that day? A. 4:00 p.m.

Q. Did you report to work at 4:00 p.m.? [442]

A. Yes.

Q. Where did you go when you got to the offices of the Company?

A. I punched my time card in and it was a little early, so I went into the cloak room. Then at 4:00 o'clock I went to my position on the New York Circuit.

Q. And did you remain working on that circuit?

A. Until approximately 4:15.

Q. What did you do at 4:15?

A. Mr. Parks and Mr. Jones entered the room and engaged in a conversation with Mr. Bash. I later left my position and joined them and at about the same time other employees did the same.

Q. How long did you remain at Mr. Bash's desk or in the vicinity of his desk?

A. Until 5:15 p.m.

Q. And what occurred at 5:15?

A. Mr. Bash fired me.

Q. Will you tell us how he fired you; that is, what he said?

(Testimony of Albert E. Hinde.)

A. He offered me my time card that he had previously stamped out, and before he handed it to me, he said to the group, "It humiliates me to do this."

Then after presenting the time cards to various individuals in the group, he presented me with mine and said, "Will you go back to work?"

I said, "I will go back to work, but I would rather discuss [443] this grievance first."

Q. And what did he say to that?

A. He didn't say anything. He asked the same question to the next person.

Q. When he finished asking the group the questions, what did he do or what did he say?

A. He said, "You are all fired."

Q. Then what did you do?

A. I left with the group and went to see if we could see Mr. McPherson.

Q. Did you discuss the matter with Mr. McPherson?

A. I spoke to Mr. McPherson, yes.

Trial Examiner Ruckel: Do we have to go into all this conversation with Mr. McPherson?

Mr. Berke: No, I am not going into it.

Q. (By Mr. Berke): All right, now, after the conversation with Mr. McPherson was finished, that you and others in the group have already testified here, what did you do?

A. I left the building.

Q. Did you come back to the office again at any time after that?

(Testimony of Albert E. Hinde.)

A. At 12:15 the following morning.

Q. That is January 22nd? A. Yes.

Q. Were you alone or were you accompanied by anyone? [444] A. I was with Mr. Parks.

Q. And where did you go and and Mr. Parks go? A. To the operating room.

Q. And whom did you see in the operating room?

A. Mr. Bash was the only company official present. [445]

* * *

Trial Examiner Ruckel: One thing at a time. You may answer.

A. We wanted to see if they had changed their policy of the previous afternoon and at the same time register a further protest against the firing of Charles Jones plus the employees who had been fired that afternoon.

Q. (By Mr. Berke): And with whom did you register that protest? A. With Mr. Bash.

Q. What was said to Mr. Bash either by you or Mr. Parks?

A. Mr. Parks spoke first but I don't remember what he said. Then I asked Mr. Bash, "Have you changed your policy regarding the firing of Charles Jones?"

Mr. Bash said, "I have nothing to do with it. He is out of my hands."

Q. Was there anything more said by anybody?

A. Yes. About this time other employees came and joined us in the discussion and I remember

(Testimony of Albert E. Hinde.)

Louis Pena joining the group and Leo turned to him and said, "Are you with these people, too, Louis?"

And Mr. Pena said, "I certainly am."

Q. Now, in addition to Mr. Pena who else do you recall joining the group? Was Lorraine Conger there? [446]

A. Yes.

Q. John Gyuresik?

A. Yes.

Q. Virginia Kelso?

A. Yes.

Q. Was Violet Leach?

A. Yes.

Q. Was Jesse McLin?

A. Yes.

Q. Homer Mulligan?

A. Yes.

Q. George Rosengren?

A. Yes.

Q. David Sheaffer?

A. Yes.

Q. What else took place then, after that question by Mr. Bash of Mr. Pena?

Trial Examiner Ruckel: Did Mr. Bash make a reply to Mr. Pena's statement that he was one of the group?

The Witness: No.

Trial Examiner Ruckel: What else was said?

The Witness: I don't recall Mr. Bash saying any more. Mr. Parks said, "We don't seem to be getting anywhere."

Then Mr. Bash said, "We will see about that," and left the operating room. [447]

Q. (By Mr. Berke): How long was he gone?

A. About three minutes.

Q. And when he came back, was he alone?

A. No. He had the building guard with him.

(Testimony of Albert E. Hinde.)

Q. And was anything said or done then?

A. He asked the guard to—he said to the guard, “Eject these two gentlemen.”

Q. Whom was he referring to?

A. Parks and myself.

Q. What did the guard do?

A. He accompanied us out of the building.

Q. Where were the group of people that you have just named, when that took place?

A. They were still gathered around Mr. Bash’s desk.

Q. About how long a time elapsed from the time you first went into the office to see Mr. Bash and the time that you were escorted outside by the guard?

A. About 7 to 10 minutes.

Q. Did you thereafter join the picket line?

A. Yes. [448]

* * *

Q. Well, the one that you spoke of on direct examination, of a meeting in which you heard something stated by Mr. Bash regarding the ACA, and you replied regarding the ACA. Do you recall your answers on direct examination?

A. Yes, sir.

Q. Do you now know what I mean when I talk about the meeting you referred to?

A. Yes. I wouldn’t consider it a meeting, I would consider it a conversation.

Q. Oh, I thought there was a reference to a meeting. I am [455] glad that is cleared up. In other words, it was just a casual conversation that

(Testimony of Albert E. Hinde.)

you happened to overhear and that you entered into? A. That is right.

Mr. Berke: Now, wait a minute. I wish counsel wouldn't characterize the conversation. The conversation which he overheard, whether it was casual or not, I think is a matter to be determined from the record.

Trial Examiner Ruckel: There was a conversation.

Q. (By Mr. Ernst): Now, prior to that time the Company made it very obvious—to everybody in the place that it wouldn't deal with the Union until it had complied with the non-Communitic affidavit provisions?

A. It had a notice on the board to that effect, but it didn't say exactly those words to my knowledge, to my recollection. The reason I engaged in this heated conversation with Bash was because I had read the part in that document that was placed up on the Company bulletin board that the Company could not negotiate with the ACA because it had not complied with the Taft-Hartley Act.

Q. All right. Now I want to see if I can't locate that particular thing since you started to talk about it.

Was that a notice posted along about July 20th, according to your recollection? Well, let me show it to you. I don't want to ask you questions like that. That may be a little [456] unfair.

A. I believe it was around that time. [457]

(Testimony of Albert E. Hinde.)

RESPONDENT'S EXHIBIT No. 8
American Communications Assn.

July 20, 1948

To the Staff of Globe Wireless, Ltd.

In order to keep you current on the status of relations between this company and the American Communications Association, we advise you herewith regarding our meeting of July 19:

1. The Company agreed to continue relations with ACA until August 15, 1948, under terms of the present agreement.

2. Since the Company has been notified by NLRB of forthcoming elections based on petitions filed by certain staff members, it cannot, after August 15, recognize ACA as sole bargaining agent for all Globe employees.

3. In an effort to prove its contention that ACA represented the majority of Globe employees, Mr. Barlow offered a petition signed by 75% of the staff, according to his statement. The Company refused to accept this petition or to check the signatures and names thereon because the method used by ACA to obtain same was not in accordance with provisions of the National Labor Relations Act.

4. After long discussion, the ACA refused point blank to make any effort to arrange NLRB certification or petition for an employee election as

(Testimony of Albert E. Hinde.)

provided by law. Also, it flatly refused to file non-Communist affidavits.

5. ACA also refused to take any action on the Company's suggestion that it get together with IBEW in an effort to start contract negotiations prior to August 15 and/or certification by NLRB of either Union.

6. ACA contended that the majority of Globe employees had approved of its refusal to sign non-Communist affidavits and the definite stand taken per above. The Company refused to acknowledge this statement as being true or to accept the petition allegedly proving this point.

7. The Company asked ACA to go to the Labor Board so that the question of who represented the employees would be settled as provided by law. If ACA continues to refuse the procedures set up by law, then the Company cannot deal solely with ACA, and instead will post a statment of working conditions and guarantees fair to all.

8. Meanwhile, and at any time after the present contract expires, the Company desires to meet with whatever Union is certified by the Labor Board.

NEIL D. BROWN.

Q. (By Mr. Ernst): Was it your recollection that Bash was passing on substantially the same information as what was in those published notices regarding the ACA?

(Testimony of Albert E. Hinde.)

Mr. Berke: Now, wait a minute. I object to that. That isn't what the witness said.

Trial Examiner Ruckel: Objection sustained. The witness related the conversation.

Mr. Ernst: Well, then I will have to see if I can find the right document.

Mr. Berke: Mr. Ernst, is it your purpose to show that Mr. Bash's statment to the witness represented the Company's view?

Mr. Ernst: I think that there is no doubt about the Company's view, that it was not going to deal with the ACA until it was certified, and was ready to when it would be certified. Now, the latter part I don't think was said by Bash, I am not going to tell you that it was.

Mr. Brotsky: We will stipulate to that at any time, that that was the Company's position. [458]

* * *

Q. (By Mr. Ernst): Were you a member of the negotiating committee that dealt with the Company? A. No, no.

Q. Did the committee give the members reports as to what happened at the meetings?

Mr. Brotsky: Just a moment.

We will object to this, Mr. Examiner, as not having been gone into on direct, repetitious.

Mr. Berke: It concerns internal affairs.

Mr. Ernst: This is going to the material that I objected to that you insisted on putting in with respect to what happened in September. [459]

Mr. Berke: But he just got through testifying

(Testimony of Albert E. Hinde.)

he was not a member of the negotiating committee, didn't he?

Mr. Ernst: Right.

Mr. Berke: Then how would he know——

Trial Examiner Ruckel: How does that bear on the conversation which he made himself a party to in the first week in September?

Mr. Ernst: I think the materiality of it to that is that the union had made it extremely clear to the Company, and I think also to the membership of the Union, that it was not going to sign the affidavits no matter what happened, and that therefore Mr. Bash's particular statement that did not have that condition with respect to "Until the ACA complied with the law" was in effect immaterial.

Mr. Brotsky: Mr. Examiner, may I say this: The Board has held consistently that the subjective effect upon a particular individual of statements by supervisors is not important. They adopted the objective standard that we all know exists in the law. Now, if——

Trial Examiner Ruckel: Let's don't argue it any further. I don't see the materiality. Objection sustained.

Mr. Ernst: Mr. Examiner, it is the only way I can get in the record the fact that everybody in the place realized that the ACA was not going to conform, and that that was the reason the company was not dealing with it, and that was known to the people around there. Now, apparently, as I understand it, the General Counsel has brought in a new

(Testimony of Albert E. Hinde.)

unfair labor practice now that is not covered by any charge, to the effect that we intimidated these people in September, and has put this witness on to prove that. Now, the nature of the intimidation, the effect of any statements depend upon what the people understood and knew at the time.

* * *

Q. (By Mr. Ernst): Now, at 12:15 a.m. on January the 22nd, did you register a protest with Mr. Bash? A. Yes.

Q. Now, what do you mean by the phrase "register a protest?"

A. I told Mr. Bash that I protested the discharge of Charles Jones and the additional employees that were discharged the previous day.

Q. In other words, when you say "registered" you mean nothing more than making that statement which you have just quoted to Mr. Bash?

A. To make the impression on Mr. Bash that I was not in agreement with what was done.

Q. Now, during the time that you were there at 12:15 did the rest of the employees there who joined you chime in on the discussion the way they did at the 4:15 to 5:15 meeting?

A. Yes, they registered remarks with Mr. Bash.

Q. Now, at the 12:15 meeting did Mr. Bash tell you in whose hands it was, the matter that the said was out of his hands? A. No, no.

Q. Did you at 5:15 tell Mr. Bash that you wanted a settlement of the grievance by the return

(Testimony of Albert E. Hinde.)

of Chuck Jones to work before you would go to work? [465] A. No, I didn't say that.

Q. Or did you ask for a good reason for it?

A. No, I merely stated that "I am willing to go back to work but I would rather discuss this grievance first."

Q. In other words, you in no way told him that you would not work until you could discuss the grievance?

Mr. Brotsky: Just a moment.

A. I said——

Mr. Brotsky: Wait a moment.

Trial Examiner Ruckel: Find out what he said. Go ahead.

The Witness: I had already made the statement, I said, "I am willing to go back to work, but I would rather discuss this grievance first." That is what I said.

Q. (By Mr. Ernst): And Mr. Bash made it clear to you that he was not going to discuss it any more, didn't he?

A. He ignored my statement and presented the time card to a person standing next to me.

Q. Now, is this the only statement that you made during the period from 4:15 to 5:15?

A. No.

Q. What else did you say to Mr. Bash?

A. At the first part of the discussion, just about the time I—oh, maybe, a few minutes after I joined the group I remember asking Mr. Bash when we were trying to find out [466] the reasons,

(Testimony of Albert E. Hinde.)

for Jones' discharge, he was evasive, he didn't give any reason beyond the fact that——

Q. What did he say rather than——

A. Well, he said "Inefficiency" I believe. I am not certain.

Q. You are not certain of what he said?

A. Some word to that effect. And then the remark I made, the further remark I made to Bash, "Was it because of those letters that we put on the union bulletin board," and he says, "No."

Q. In other words, you were referring then to the letters protesting the return of the 40 hour week?

A. No, we were referring to the letters protesting the layoffs. [467]

* * *

Q. Was that a meeting a formal meeting arranged in advance?

Mr. Berke: Wait a minute. I object to this as going beyond the scope of the direct examination.

Trial Examiner Ruckel: Objection sustained.

Mr. Berke: It is irrelevant. [468]

* * *

Mr. Ernst: Now, Mr. Examiner, there has not been any showing that this man acted as a member of the ACA, of the ACA Grievance Committee at that meeting. That is what I am going into, I am asking the questions leading up to that, and you are preventing me from doing so. [469]

Trial Examiner Ruckel: Well, it is shown that

(Testimony of Albert E. Hinde.)

he is a member of the group representing the employees of the company.

Mr. Ernst: Right, that is quite a bit different than the matter of his—and they being there as a representative of the ACA and a member of its Shop and Grievance Committee.

Mr. Berke: Well, he has testified he was a member of the committee.

Mr. Ernst: Quite right, he has testified to that.

Mr. Berke: And attended one meeting with management.

Mr. Ernst: Quite right, he testified he was a member, and he testified to the meeting.

Mr. Berke: What difference does it make whether the meeting was formal or informal?

Mr. Ernst: Well, I assume that the relevance of this meeting is, has something to do with his being a representative of the ACA at that particular time, and I want to go into the meeting to find out whether it was a meeting with the ACA or with somebody else. I want to know how it was arranged, who were there, whether they were ACA members or not, and whether they were members of the Grievance Committee or not.

Trial Examiner Ruckel: I don't think that is relevant. The point was was he there representing himself, or was he there representing other employees in activity. Whether it [470] was actually sponsored by the union or whether it was formal, or whether it was informal, I don't think makes any difference.

(Testimony of Albert E. Hinde.)

I am going to sustain the objection. We are just wasting time arguing about it. Go ahead.

Mr. Ernst: I don't see how I can put in my side of the background, if I am stopped at every moment while the General Counsel puts in anything he wants to as to this background.

Trial Examiner Ruckel: You can take exceptions to it.

Mr. Ernst: I assume that I have automatic exceptions to all of these rulings.

Mr. Brotsky: Why does Counsel have to labor the record with these repeated exceptions?

Mr. Ernst: I don't want to have another hearing in the case, if I can avoid it. [471]

* * *

Mr. Ernst: The point is that they have gone into this whole period from September up to January 21st. I objected to going into anything prior to January 21st. They have gone into it.

Trial Examiner Ruckel: Therefore, we should go into everything else before January 20th, is that it?

Mr. Ernst: No, but we should get a rounded picture of the background, if you are going to go into it, or a rounded picture of any alleged unfair labor practices.

Trial Examiner Ruckel: The only thing was we want to know whether Mr. Bash said or didn't say what the witness attributed to him as having been said, so I can't assure you that I will permit you to

(Testimony of Albert E. Hinde.)

take this witness over later on as your own witness on that point, because I doubt the relevancy of it either now or then. [479]

* * *

LORRAINE E. CONGER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: State your name, please?

The Witness: Lorraine E. Conger, C-o-n-g-e-r.

By Mr. Berke:

Q. Where do you live, Miss Conger?

A. 1941 Taraval Street, San Francisco.

Q. San Francisco? A. Yes.

Q. Were you ever employed by Globe Wireless?

A. Yes, I was.

Q. When were you first hired by that company?

A. November 4, 1947.

Q. And when did you last work there?

A. January 22, 1949.

Q. What job did you hold on January 22, 1949?

A. I was classified as a teletype operator, but I was working at the cable dispatch desk, or the traffic desk. [482]

* * *

Q. Do you recall the night of January 21, 1949?

A. Yes, I do.

(Testimony of Lorraine E. Conger.)

Q. What occurred on that evening that makes you recall it particularly?

A. Well, at about 7:30 in the evening I received a phone [483] call from Mr. Bash.

Q. How do you know it was Mr. Bash that called you?

A. He identified himself.

Q. And will you tell us what he said and what you said in the course of that conversation?

A. Well, I hadn't been up very long, and I was getting ready to go to a union meeting, and the phone rang, and I answered, he says, "This is Leo."

And I was surprised, and answered "What are you doing down there at this hour of the night?"

Q. Where were you referring to?

A. To the office; I could hear the background, the noise.

Q. Go ahead.

A. And he said, "Well, I don't know whether anybody else has told you or not, but there has been some trouble down here, and we fired Chuck Jones and a bunch of other people who protested the [484] firing."

Q. What did you say to that, if anything, or did he say something more?

A. He kept on talking.

Q. Will you tell us what else he said as you recall it?

A. He said that "Jones and Risley, those two stinkers, had been engaged in too much union activity." And then he said, "This ACA outfit is nothing more than a bunch of Communists."

(Testimony of Lorraine E. Conger.)

At this point I said, "Wait a minute now! Who are you calling a Communist? I will have you know that I am a member of the twelfth generation, my family, in this country, and I can hardly be called a Communist."

Q. What did he say to that?

A. He said, "Well, take my word for it, anyway they can't do you any good." And then he asked me, told me that he liked me, and my work was tops, and that my job was there if I wanted it, and he wanted to know if I was coming in, and I said that I didn't know, that I would let him know a little later, in plenty of time.

Q. Was there anything more said by either one of you?

A. He made the remark, volunteered the information that he had taken Chuck's card into General Boatwright. He didn't say when or why or anything.

Q. What card was he referring to?

A. His time card.

Q. Was there more to the conversation? [485]

A. I don't recall if there was or not.

Q. Have you exhausted your memory on that?

A. I guess I have.

Q. Do you recall whether or not he made any reference to his having been a member of the Union, or with reference to the New York Office?

A. Oh, yes.

Q. Does that refresh your memory?

A. Yes.

(Testimony of Lorraine E. Conger.)

Q. Will you tell us what it was he said?

A. He said that the New York Office force had walked out, and that there had not been any contact with them since about 4:15.

Q. What was it he said about his having been a member of the Union?

A. Oh, let's see—he mentioned that he had been a member of the ACA and had been involved in a strike, and how hungry he got, and then he says, "It is pretty nice to keep eating, you know."

Q. Was there anything else that you remember about the conversation?

A. I don't believe there was.

Q. You say you think that was all?

A. I think that was all.

Q. What watch did you work? [486]

A. Midnight to 8:00.

Q. And were you due to go to work midnight that night he called you? A. Yes.

Q. Now, this union meeting that you had scheduled to go to, when was that scheduled?

A. That was scheduled regularly for 8:00 p.m.

Q. Was that a meeting that had been scheduled some days before? A. Yes, it was.

Q. Did you go to the meeting?

A. Yes, I did.

Q. And while at that meeting did you learn about the discharge of Charles Jones——

Mr. Ernst: I submit that she has testified about learning about it.

(Testimony of Lorraine E. Conger.)

Mr. Berke: Let me finish the question.

Q. (By Mr. Berke): —as well as having previously been told by Mr. Bash about this?

A. Yes.

Mr. Ernst: I object.

Trial Examiner Ruckel: Objection overruled.

Q. (By Mr. Berke): Now, did you go to work at midnight? A. Yes, I did.

Q. Where did you report for work? [487]

A. Where?

Q. Yes. A. At the cable desk.

Q. And did you proceed to work?

A. Well, it was pretty badly messed up.

Q. What was pretty badly messed up?

A. The file system on the desk, which is my job.

Q. Did you continue working throughout the period of your watch? A. No.

Q. What happened?

A. At about 12:15 or 12:20 Mr. Hinde and Mr. Parks came in.

Q. And did you see where they went?

A. They walked back to Mr. Bash's desk.

Q. Did you join Mr. Hinde and Mr. Parks?

A. We all went back in a group.

Q. That is, all the people on the mid watch?

A. That is right.

Q. About how long after Mr. Bash and Mr. Hinde and Mr. Parks were there?

A. Within about three minutes, I suppose.

Q. What was your purpose in joining the group with Mr. Hinde and Mr. Parks?

(Testimony of Lorraine E. Conger.)

Mr. Ernst: Are you asking about her personal purpose or that of the group? She said she went back with the group. [488]

A. Well, I didn't feel too secure, in view of what had happened already.

Q. Well, tell us what you meant by that, what your purpose was in going up with the group with Mr. Hinde and Mr. Parks.

A. It was to protest the discharge of these other people.

Q. Do you know whether or not there was any activity over the circuits during that period; that is, from the time you came to work at 12:00 o'clock up to the time that you joined the group and went up to Mr. Bash's desk?

A. There was no activity on the circuits.

Q. Was there any activity, if you know, between the—strike that.

How long did you and the group remain at Mr. Bash's desk?

A. From about 12:20, when we went back.

Q. Until? A. Until about 1:30.

Q. From that period of time, 12:20 to 1:30, was there any activity over the circuits?

A. There was not.

Q. What was the condition of the Manila circuit, if you know?

A. Well, they didn't seem to have any signals there.

Q. Was that what is commonly known as a fading period? A. That is right.

(Testimony of Lorraine E. Conger.)

Q. While you and the group were assembled at Mr. Bash's desk, [489] did Mr. Bash say anything to you people? A. He said several things.

Q. Well, tell us what he said, as best you remember it, and the words that he used.

Trial Examiner Ruckel: Go ahead.

A. I don't remember.

Q. (By Mr. Berke): Well, whatever you remember, just tell us whatever you recall he said.

Tell us this: What was he doing during the period of time that you were assembled around there?

A. Well, Mr. Parks and Mr. Hinde had come in and started talking to him about the reinstatement of other people and Chuck Jones, and Leo said that he didn't have the power to do it. He said, "It is out of my hands."

Q. All right, now, what else took place; that is, what else did you hear, what else did you see, while you were there?

A. Mr. Bash got up from his desk and walked out into the hall and got the guard and had Mr. Parks and Mr. Hinde taken out of there.

* * *

Q. Did he talk to you people or say anything to the group [490] in between these telephone calls or while he was making the telephone calls or while he was making the telephone calls? A. Yes.

Q. What did he say?

A. He made a remark about this being in the hands of the General, the General was running things and he would run things his way.

(Testimony of Lorraine E. Conger.)

Q. What else did he say?

A. He looked at Louis Pena and said, "Louis, are you in this, too?" And Louis said, "Yes, sir, I am."

Q. Did he make any more remarks to the group?

A. He looked around the group and said, "Well, if you are going to tie yourselves to the tail of this Communist kite, you can sink with it."

Q. Was there anything more said by him?

A. Not that I heard.

Q. Did he quote General Boatwright, if you recall?

A. That the General had given orders to fire everybody, if necessary.

Mr. Ernst: I ask that that be stricken as hearsay.

Trial Examiner Ruckel: It may stand, not as to whether the General said it or not but its repetition by Bash would make it admissible as coming from Bash.

Mr. Ernst: I was just going to the form, Mr. Examiner. I realize that. I wanted her to quote him, if possible. [491]

Mr. Berke: She is quoting Mr. Bash, if you don't recall the conversation.

Q. (By Mr. Berke): Do you recall whether there was anything else said?

A. Not that I remember.

Q. Did anybody in the group make any response to Mr. Bash's remarks?

(Testimony of Lorraine E. Conger.)

A. I think there was someone in the group made some remark, but I don't remember the remark.

Q. You don't remember it. What happened then about 1:30 a.m., which is the end of the period that the group was assembled?

A. Well, about that time Leo went to the card rack, took our time cards out.

Q. What did he do with them?

A. He had them in his hand for a moment, and then laid them down beside the telephone. He said, "I don't think it is necessary to go through this motion of stamping you out. You all know you are fired."

Q. What did you people say or do?

A. We went to the cloak room and cleaned out our lockers and got ready to leave. [492]

* * *

Q. (By Mr. Berke): Did Homer Mulligan and Violet Leach work on your watch?

A. Yes, they did.

Q. Do you know whether or not they were present in that group that was assembled around Mr Bash that night?

A. They were.

Q. Did they join in with the rest of the group in requesting reinstatement of Mr. Jones, do you know?

Mr. Ernst: I object to her testifying as to that, the other people can testify to it.

Trial Examiner Ruckel: She may testify what she saw and [495] heard.

A. They were there, they took part in this.

(Testimony of Lorraine E. Conger.)

Q. (By Mr. Berke): Now, when the group left the company premises that night did you leave alone, or did somebody—that is, did the group leave as such, or was somebody with that group that did not belong to that watch?

A. Well, the building guard took us all out in a body.

Q. How did that happen?

Mr. Ernst: I submit it is immaterial, I object to it as immaterial.

Mr. Berke: It is very material.

Trial Examiner Ruckel: Go ahead.

Did somebody call up for him, or do you know?

A. After Mr. McDowell and Mr. Chin came in Mr. Bash went out and got the building guard, and said, "Take these people out of here."

Q. (By Mr. Berke): And did the guard go out with you? A. Yes, he did.

Mr. Berke: You may take the witness. [496]

* * *

Cross-Examination

By Mr. Ernst:

Q. I see. Now, at the time you came to the cable desk on the morning of January 22nd, you stated that it was badly messed up. Would you give me the detail of why you so described it?

A. Well, the work on the cable desk consisted of filing the [500] day's traffic sent and received only when in solid sequence. Nothing was solid on that desk that night.

(Testimony of Lorraine E. Conger.)

Q. You mean everything is usually in order, numerical order? A. That is right.

Q. At the time you arrived was there anybody working at the desk that you replaced?

A. There was nobody over there.

Q. Now, you were at the Union meeting at 8:00 p.m.? A. That is right.

Q. And at that time did the group there hear of what happened at 4:15 to 5:30 in the afternoon?

A. We did.

Q. And did they hear that the persons who had been involved had been discharged?

A. Yes, sir.

Q. And did you know what action those persons took at 4:15 to 5:30?

Mr. Brotsky: Just a moment. You mean was she told what action they took?

Mr. Ernst: I will reframe it.

Q. (By Mr. Ernst): Were you told at the meeting what actions they took? A. Yes, sir.

Q. And did the actions that you took from 12:15 to 1:30 seem to you to be essentially the same as your fellow-workers [501] took between 4:15 and 5:30?

Mr. Brotsky: Just a minute. I will object to that.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): What did they tell you that the other people had done between 4:15 and 5:30?

(Testimony of Lorraine E. Conger.)

Trial Examiner Ruckel: Is that material? She didn't go into that on direct. She simply said she heard further comment that Jones had been discharged.

Mr. Ernst: I think it is material to find out whether at 12:15 she started to do something that was essentially the same as what her fellow-workers had done 8 hours previously, and had been discharged for.

Trial Examiner Ruckel: We are concerned with what she did when she got to the office.

Mr. Ernst: Pardon me?

Trial Examiner Ruckel: We are concerned with what she did when she got to the office.

Mr. Ernst: Well, but I submit that it is relevant that when she did so she knew that persons who had done exactly the same thing, or essentially the same thing 8 hours before had been discharged for it.

Mr. Brotsky: Her knowledge can be inferred by the facts of what she did and what she was told.

Trial Examiner Ruckel: Objection sustained. Let's go ahead. [502]

* * *

Q. He didn't give you that much detail. Now, when you arrived at the office at about 12:00 o'clock, did you tell Mr. Bash, as you had promised him you would at the end of your conversation at 7:30, whether you were going to work that night?

A. I had called at 9:30 p.m. and notified the office. [505]

(Testimony of Lorraine E. Conger.)

Q. What did you tell the office at 9:30?

A. I told them simply, "Tell Leo Lorraine will be in at midnight as usual."

Q. Now, was this after the meeting was over?

A. It was. [506]

* * *

VIRGINIA KELSO

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Exxamination

By Mr. Berke:

Q. Will you give the Reporter your name and address, please?

A. Virginia Kelso, 529 Masonic Avenue, San Francisco.

Q. Miss Kelso, were you ever employed by Globe Wireless? A. Yes, I was.

Q. When were you first hired by that Company?

A. October '46.

Q. And when did you last work there?

A. January 22nd.

Q. What year? A. '49.

Q. And what position did you hold on January 22, 1949?

A. I was an automatic printer operator.

Q. What watch did you work on?

A. Midnight to 8:00 in the morning. [511]

* * *

(Testimony of Virginia Kelso.)

Q. Now, at the time you went to work for Globe, were you a member of any union?

A. No, I wasn't.

Q. Did you thereafter become a member of a union? A. Yes.

Q. What union? A. ACA. [512]

* * *

Q. Do you recall January 21, 1949?

A. Yes, I do.

Q. How did you happen to recall that night in particular?

A. Because about seven o'clock that evening I had a telephone call from Leo Bash.

Q. How do you know that it was Leo Bash that telephoned you?

A. Well, I know his voice and he also said, "Jinnie, this is Leo," when I answered the phone.

Q. Will you please tell us the conversation that you had with him on the phone?

A. Well, I just said, "Hello."

And he said, "Jinnie, we have had some trouble down here this afternoon."

He said, "The whole four to mid shift has been fired," and there wasn't much I could say.

Q. What did you say?

A. I said, "Oh, God!"

Q. Did he say anything more?

A. He said, "I am going to have to ask you, if you want your job or not."

Q. Did you make any response to that?

(Testimony of Virginia Kelso.)

A. I said, "Yes, of course, I want my job."

And he said, "Well, will you be coming in tonight at [513] midnight?"

And I said, "Yes, Leo, I will be there at midnight."

Q. Was there anything more that was said?

A. No. He said, "I will see you then."

Q. Did you report to work at midnight?

A. Yes, I did.

Q. Do you know whether or not there was a union meeting scheduled for your watch that night?

A. Yes. I went to the eight o'clock meeting.

Q. You did go to that eight o'clock meeting. And did you hear about Mr. Jones' discharge at that meeting?

A. Yes, there was quite a bit of discussion.

Q. Now, did you report for work at midnight?

A. Yes.

Q. Where did you go?

A. I went over to my New York circuit.

Q. And what was the condition of your circuit?

A. It was terrible.

Q. What do you mean by terrible?

A. There was no contact with New York at all.

* * *

Q. (By Mr. Berke): Did you remain working throughout the period of your watch?

A. There was nothing for me to do at the time, so I went over to the teletype department. I was talking to the girl over there.

(Testimony of Virginia Kelso.)

Q. Now, were you in the operating room all the time? A. Yes.

Q. Did anything take place while you were in the operating room that was unusual?

A. Yes. Mr. Hinde and Mr. Parks came in.

Q. And what did you see them do?

A. They went over to Leo's desk. [515]

Q. Did you later join them?

A. Yes, I did.

Q. Were there others there besides Parks and Hinde? A. Yes, there were.

Q. Can you tell us whether or not John Gyuresik was there? A. Yes, sir.

Q. Violet Leach there? A. Yes, sir.

Q. Jesse McLin? A. Yes.

Q. Homer Mulligan? A. Yes.

Q. Louis Pena? A. Yes.

Q. George Rosengren? A. Yes.

Q. David Sheaffer? A. Yes.

Q. And Lorraine Conger? A. Yes.

Q. Who has just testified? A. Yes.

Q. What was your purpose in joining the group?

A. Well, I felt that if they could fire one person as they did Chuck Jones my job was not very safe either. [516]

Q. And did you speak to anyone while you were assembled there? A. No, I never said a word.

Q. Did you say anything to Mr. Bash?

A. No.

Q. Did Mr. Bash make any comments to the group?

(Testimony of Virginia Kelso.)

A. Yes, from time to time he made comments.

* * *

Q. All right. What else did you hear?

A. Well, he asked Louis Pena, he said, "Are you in this too, Louis?"

And Louis said, "Yes, I am." [517]

Trial Examiner Ruckel: Did he say anything else?

The Witness: I was trying to think.

Q. (By Mr. Berke): Do you recall whether he said anything else or not?

A. I can't remember anything.

Q. Have you exhausted your memory on the conversation?

A. Well, that is all I can remember, until he went over to the time clock.

Q. What did he do at the time clock?

A. He took all our cards out.

Q. What did he do with those cards?

A. Well, he laid them on the desk by the phones there, and he turned around to us and he said, "I don't think there is any use in my going through the motions of timing you out." He says, "You all know you are fired."

Q. Was there anything else that he said then?

A. Oh, and he also said, he says, "And you are also on strike."

Q. Now, you say you have exhausted your memory with respect to the previous conversation?

A. Yes.

(Testimony of Virginia Kelso.)

Q. As to his going to the time clock?

A. Yes.

Q. Does this refresh your memory, do you recall whether or not he said anything about tying yourself up with the [518] communists, or hitching yourself to the communist star?

A. Oh, yes, he did, he made some remark about we were tying ourselves to the tail of a commie, or something like that, I don't remember the actual words, and that we were going to sink with them.

Q. Did he make any reference to General Boatwright?

A. Yes, he said, he says, "You know you are dealing with the General of the Army now, and he is going to do things his way."

Q. Do you know what position General Boatwright held with the company?

A. He is a Vice President.

Q. Do you recall whether or not he told you that the company wanted to get the union out, and that they were starting with Chuck Jones and Bruce Risley?

A. Leo told me that on the phone.

Q. That evening?

A. No. the next night.

Q. This was after you had been discharged?

A. After I had been fired, yes.

Q. All right. Well, after he told you that you were discharged what did you do?

A. Well, we just sat around there and the phone rang once, and he answered that, and he had made all these telephone calls, and then Mr. McDowell and Mr. Chin came in, and when they came [519]

(Testimony of Virginia Kelso.)

in Leo went out and came back with the building guard.

Q. And what happened when he returned with the building guard?

A. He said, "Take these people out of here."

Q. Did the guard escort you people out?

A. Yes, we went into our lockers first and got our stuff.

Q. Everybody that you have named here were escorted out by the guard? A. Yes.

Q. When did you next see or talk with Mr. Leo Bash after that?

A. He called me the next evening.

Q. Where was this call made?

A. To my home.

Q. And do you know about what time it was?

A. I am not too sure about the time; it was late in the evening.

Q. Would this be the evening of January 22nd?

A. Yes, sir.

Q. The same day on which you were discharged?

A. Yes, sir.

Q. How do you know that it was Leo Bash that telephoned you on that occasion?

A. He said, "This is Leo."

Q. And what was the conversation you had with him then? [520]

A. Well, he said, he wanted to know if there was anything personal in what happened, he wanted to know if we were still friends, and I said, "Yes."

(Testimony of Virginia Kelso.)

we were, there was nothing personal in it as far as I was concerned.

Q. And what else did he say?

A. He said, "You know, Ginny," he says, "The company wants that union out of there."

He said, "They are starting with guys like Chuck Jones and Bruce Risley, and," he says, "They will go on down the line, until——"

Q. They are going on down the line until——

A. He said they are going on down the line.

Q. Was there any more between the two of you in that conversation?

A. Yes. He said, he says, "I am chief operator and——" he says, "I am going to run this office the way I want to, and——" he says, "These commies aren't going to tell me how."

Q. Did you say anything to him during the course of this telephone conversation?

A. No, I didn't get a chance to.

Q. Other than what you have just related?

A. Yes.

Trial Examiner Ruckel: What do you mean "you didn't get a chance to?"

The Witness: He talks too fast. [521]

Cross-Examination

By Mr. Ernst:

Q. How long did Leo talk to you that evening of January 22nd, that is the last conversation that you referred to? A. Not very long.

Q. It was not one of those 40 minute things?

A. No, it was not. It was very short. [522]

(Testimony of Virginia Kelso.)

Q. Now, did he ask you to come back to work?

A. No, he didn't.

Q. He on the night before, though, very definitely wanted to be assured that you were going to come to work, didn't he?

A. That is right.

Q. Did that appear to be the purpose of his call on the night before?

Mr. Brotsky: Just a moment.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): Did Leo explain at all in detail to you on the 21st, that is the evening of the union meeting?

A. No, he didn't explain anything.

Q. He didn't give you any detail as to what the trouble had been down there?

A. No.

Q. Did he indicate at that time that any union activity had been the reason for the discharge of the 4 to mid watch?

A. On that first conversation?

Q. Yes.

A. No, he didn't say anything at all.

Q. Now, you attended the meeting at 7.30 or 8 o'clock?

A. 8 p.m.

Q. 8 p.m.?

A. Yes.

Q. And at that time were you advised as to what had [523] occurred between 4:15 and 5:30?

A. Yes, they told me.

Q. And who gave you that advice?

A. Well, I don't remember. Everybody was talking about it.

Q. Were most of the people who had been on the

(Testimony of Virginia Kelso.)

4 to mid shift, and who had been involved in the conversation with Leo Bash, present at the 8 o'clock meeting?

A. I honestly don't remember who was there.

Q. Well, maybe I can get at the general point.

Did it seem that most of the people from the 4 to mid watch who were ACA members were present at the meeting?

A. I think most of them [524] were.

* * *

DAVID E. SHEAFFER

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: Your name, please?

The Witness: David Sheaffer.

The Reporter: Spell your last name, please?

The Witness: S-h-e-a-f-f-e-r.

Q. (By Mr. Berke): Where do you live, Mr. Sheaffer?

A. 1475 Guerrero Street, San Francisco.

Q. Were you ever employed by Globe Wireless?

A. I was.

Q. When were you first hired by that company?

A. The early part of October, 1946.

Q. And when did you last work there?

A. January 22, 1949.

Q. What job did you hold on January 22nd?

A. APO; I was automatic printer operator.

* * *

(Testimony of David E. Sheaffer.)

Q. What watch were you working in January, 1949? A. Mid watch.

Q. That is mid to 8 a.m.?

A. That is right.

Q. When you first went to work for Globe were you a member of any union? A. No.

Q. And did you later become a member of the union? A. I did.

Q. What union? A. ACA. [529]

* * *

Q. Were you a member of any committee, or did you hold an office in the union?

A. I was a member of the Shop Committee, and I also collected dues in the mid watch after the check-off was no longer in effect.

Q. Do you recall January 21st, 1949?

A. I recall January 21, 1949.

Q. How do you happen to recall that particular night or date, rather?

A. The date Charles Jones was discharged from Globe Wireless.

Q. Where did you learn about Mr. Jones' discharge? A. The union office.

Q. What were you doing at the union office at the time?

A. I came downtown early that afternoon between 12 and 1:30 p.m. I was so informed right there.

Q. Was this at a meeting?

A. This was not at a meeting.

(Testimony of David E. Sheaffer.)

Q. This was preceding the meeting?

A. Yes, there had been a meeting scheduled. There had been two meetings scheduled, I should say.

Q. For later?

A. Yes, later, one at 1:30, I believe, and one at 8 p.m. [530]

Q. Did you attend the union meeting?

A. I attended the 8 o'clock meeting.

Q. Now, did you report on the midnight watch that night? A. I did.

* * *

Q. Did anything unusual occur that night while you were [531] working?

A. 12:15, approximately at 12:15, Mr. Hinde and Mr. Parks appeared in the office.

Q. And where did you see them go?

A. They went up forward to the supervisor's desk in the forepart of the room.

Q. Did you later join them?

A. I joined them immediately.

Q. Were there any others on the mid watch that joined? A. The entire mid watch joined them.

Q. Was Lorraine Conger there? A. Yes.

Q. John Gyuresik? A. Yes.

Mr. Ernst: Isn't this repetition?

Trial Examiner Ruckel: May it be stipulated they were there?

Mr. Ernst: It is in there.

(Testimony of David E. Sheaffer.)

Trial Examiner Ruckel: The record shows they were there.

Mr. Berke: I would rather have it in the record again.

Q. (By Mr. Berke): Virginia Kelso?

A. Yes.

Q. Violet Leach? A. Yes.

Q. Homer Mulligan? [532] A. Yes.

Q. Louis Pena? A. Yes.

Q. George Rosengren? A. Yes.

Q. David Sheaffer? A. Yes.

Q. You, of course? A. Yes.

Q. What was your purpose in going up to Mr. Bash's desk?

A. I wanted to protest the discharge of Charles Jones and the former employees of Globe who had been discharged, I imagine around 4:15 or 5:00 of the day before.

Mr. Ernst: May I strike out his imagination.

Trial Examiner Ruckel: Well, the record shows.

Q. (By Mr. Berke): Did you say anything to Mr. Bash?

A. At one time or another, I did. Mr. Bash had asked a question and I don't remember what it was. I had said, "That means the end of Globe Wireless."

Q. Do you know what the question was?

A. I am sorry. I don't know what the question was. [533]

(Testimony of David E. Sheaffer.)

Q. (By Mr. Berke): Did Bash make any comments to the group while you were assembled there?

A. Yes, he did.

Q. What did he say? [534]

A. One part of his conversation ran: "The company has been expecting this for the past six months and the General has told me to fire the entire bunch, if necessary."

Q. What else did he say?

A. He also made the statement that we had hitched ourselves to a Communist kite and may sink with it. He also accused us of causing a sit-down strike.

* * *

Q. (By Mr. Berke): About how long was the group assembled around Bash's desk?

A. Approximately one hour.

Q. What happened at the end of the hour? [535]

A. Mr. Bash went over to the time cards and took our time cards out of the rack, placed a rubber band around them, and made the statement he would not go through the formality of punching us out, as we knew that we were fired already. He then disappeared from the room and returned with a building guard.

Q. What happened then?

A. He instructed the building guard to "show these people out."

Q. The guard escorted you out?

A. The guard escorted us out. [536]

* * *

LILLIE I. FRIEND

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: Your name, please.

The Witness: Lillie I. Friend, F-r-i-e-n-d.

By Mr. Berke:

Q. Is it Miss or Mrs. Friend?

A. Mrs.; just Mrs.

A. Mrs. only. My husband and I are friends no longer; we haven't been for years.

Q. I was not concerned with that, I just wanted to be sure that I was calling you by the proper name.

Did you give the reporter your address?

A. 1299 O'Farrell Street, San Francisco.

Q. Mrs. Friend, were you ever employed by Globe Wireless? A. I was.

Q. When were you first employed there?

A. October the 9th, 1946.

Q. And what was your last date of employment?

A. January 24, 1949, of this year.

Q. What position did you hold in January, 1949?

A. I was teletype operator, service clerk. I had various positions in the jobs in the teletype department, including UPAC messages for delivery to the San Francisco area.

Q. What watch did you work on?

A. 8:00 to 4:00 was my general watch for the

(Testimony of Lillie I. Friend.)

last 6 or 8 months. Prior to that I worked from 7:00 until 3:00 most of the time.

* * *

Q. (By Mr. Berke): Were you a member of any union before you went to work for Globe?

A. Yes, I was, I had been a member of a union.

Q. Were you a member of the ACA before you went to work for Globe? A. I was years ago.

Q. And did you join the ACA, or continue your membership in that organization when you were employed by Globe?

A. I did, but my condition of employment by Mr. Albertson, who hired me, told me that he would hire me, but I would have [547] to go to the union hall first and get my clearance card, which I did.

Q. All right.

A. This was October 8th or October 9th I started to work.

Q. All right, you have answered.

* * *

Q. (By Mr. Berke): Do you recall a conversation with Mr. Bash in the latter part of August of 1948? A. Yes, sir. [548]

* * *

Q. (By Mr. Berke): Where did this conversation take place?

A. In the operating room in my department. Mr. Bash was sitting there in his department talking to me.

(Testimony of Lillie I. Friend.)

Q. All right, what did he say to you as near as you can remember, his words?

A. It was a day or two after I came back from my vacation, it was during the incident of the bulletin board, the union bulletin board, concerning the incident of the union bulletin board.

Q. Wait a minute, Mrs. Friend. Just answer my questions, please. Listen carefully.

What did he say to you? A. He said——

Trial Examiner Ruckel: What did he say and what did you say?

The Witness: He said "Lillie, I want you to contact all your ACA members here and advise them that there are to be no longer any union activities in this office, or on the premises, [549] that the company is out to fire the ACA and they would be prepared to move in with a full crew if we did not stop our union activities, that would be regardless of our union—of our seniority, based on the seniority basis, regardless of our seniority. And he said that "This isn't my orders, but it is the orders from the brass hats, the powers that be, inside," he said that "Foye Hayden and Madeline Bruce are out to cut our throats, they want to get rid of the union." He says, "You were not—of course, you can't go out and beat them over the head like they do to them on the waterfront, but,—” he says, "Nevertheless, they are out to do everything they can to get you." And he says, "They are making, different ones are making reports on different watches of what your

(Testimony of Lillie I. Friend.)

activities are, and so—" he says, "I want you to see now that you go around and tell everyone of your members to cut out these union activities while on the job."

Q. (By Mr. Berke): Did you see any of the employees who were members of the ACA and give them Mr. Parks' instructions—excuse me—Mr. Bash's instructions?

A. I did. And Mr. Bash went over and sat at his desk at the end of the room and he watched me, and I went over to Mr. Parks first, and I gave him that information, and Mr. Parks told me "Well, Mr. Bash already told the committee that." [550]

* * *

Q. Now, do you recall June 23—strike that—January 23, 1949? [552]

A. January 23rd?

Q. Yes? Did you receive a telephone call from Mr. Bash? A. Yes.

Q. That day? A. Yes, sir.

Q. About what time?

A. It was somewhere around 8:00 o'clock in the evening.

Q. And where were you when you got the call?

A. I was in my home, the phone rang.

Q. How do you know that it was Mr. Bash who was calling?

A. Because I recognized his voice, and he says, "This is Leo." He asked, "Is that Lillie?" I said, "Yes." He said, "This is Leo," I said, "Yes."

Q. All right, will you tell us the conversation you had with him on the telephone?

(Testimony of Lillie I. Friend.)

A. He says, "I want to inform you of your status on your job." I says, "Yes."

He says, "The day watch is not involved in these firings, but the 4:00 p.m. watch and the mid watch are fired, and they will not be reinstated.

I says, "Yes," like that.

And he says, "Now, your job is here, and I want you to know, and I want you to come down, I want to be sure you are coming down tomorrow morning to go to work." And I said, "Yes."

And then he says, "Of course," he says, "Your work is A [553] No. 1 since a little incident we had in the past."

And he says, "You are an old woman—an older woman now, jobs are hard to get and," he says, "believe me," he says, "I am your friend, Barlow is not."

Q. Who?

A. Mr. Bash said, "Believe me, I am your friend, Barlow is not."

Q. Who is Barlow?

A. He was the Secretary of the ACA then, he was in the shop.

Q. All right, go ahead with the conversation.

A. So I says, "Yes, Leo." And he says, "Are you going to come down, be down?"

I said, "Yes, I will be down," and that was practically the conversation we had.

Q. All right. Did you go down to work then the next morning at 8:00 a.m.?

A. I did, I went in.

(Testimony of Lillie I. Friend.)

Q. Where did you go?

A. I went up to the operating room the way I always do when I go into work.

Q. Now, as you were entering the building did you meet anyone? A. Yes.

Q. Whom did you meet?

A. Paul Guerrero and Les Wheeler went in with me. [554]

Q. Did the three of you then continue on into the building?

A. We did. We first went, the three of us went to the time clock cards to get our time cards.

Q. What did you find when you got there?

A. My time card was not there, neither was Les Wheeler's, but Paul Guerrero's was, and Paul Guerrero stamped his in.

Q. When you found that your card was not there what did you do?

A. Well, I looked over to the room, to Leo Bash's desk, because I could see his desk from when you enter the room, and he was getting up from his desk, and Mr. McPherson was behind him, and Leo Bash came over towards us in very angry mood.

Q. What did he say?

A. He pointed his finger, shook his finger, and went up to Paul Guerrero first, and he said, "Paul, you are fired," and Paul says, "Why?" He says, "You didn't bring your doctor's certificate."

Paul says, "Well, I phoned in I was sick and I couldn't come in."

(Testimony of Lillie I. Friend.)

He says, "Nevertheless," he says, "you cannot go to work unless you have your doctor's certificate."

Paul Guerrero says, "I haven't got it." Then there was words ensued, then Leo—Les Wheeler, he was there—and then he turned to Les Wheeler and talked to him, but I don't recall just what he said to Les Wheeler. [555]

Q. All right. Did he say anything to you?

A. Yes, during the conversation he looked at me. He said "Lillie, your job is there, you get back and go to work."

And I says, "Well, Leo, can I ask you something?"

He says, "Yes."

I says, "How do you expect me to believe that you are my friend when I see all of my friends are fired and out on the picket line?" And he got angry at me, and he went on to say something, and then I said to him, "Well, Leo, can I ask you something else?" And he says, "Yes."

So I referred to our conversation we used to have about the Bible. And I says, "You are talking about Christianity!" Then and there I raised my voice, because he was getting, starting to raise his voice too. I says, "Yes, Leo, I do believe in Christianity, but I don't see any Christianity being practiced here." And then he says, "I swear by God——" and he was trying to justify himself, in words to the

(Testimony of Lillie I. Friend.)

effect that his—that he was right, and he was justified in firing Chuck Jones.

Q. All right, then what did you do or say?

A. Well, I couldn't think what to say. He started, he turned to Les Wheeler and started talking to Les Wheeler and Paul, the three of us were kind of talking. Sometimes I would say something, sometimes he would say something. I don't remember all the conversation.

Q. What next happened that you remember? [556]

A. Well, he told the boys they were fired, both Paul and Les Wheeler, and they started about—they were about half way to the door, and then he turned to me and he said in a very rough way, I have never been talked to like that by a Chief Operator wherever I worked, or any boss, in a manner demanding me to go back to work. There was no one in the teletype department, I couldn't go to work because they were all fired. So I was trying to think what to say, and then he pointed to the door, he said, "Well, trot along then." So I followed Paul Guerrero and Les Wheeler. They turned around and saw that I was coming, so they waited for me, and I went out the door.

Q. Did you serve on the picket line afterward?

A. I did.

Q. Were you ever asked to return to work?

A. No, not after I was fired.

Q. Did you get your final pay check?

A. I did.

(Testimony of Lillie I. Friend.)

Mr. Brotsky: I believe counsel stipulated that all the persons——

Mr. Berke: Named in the Complaint received a termination notice.

Mr. Ernst: Yes.

Mr. Berke: O.K., fine. I have no further questions.

Trial Examiner Ruckel: Cross-examine. [557]

Mr. Ernst: I stipulated they were sent them, not that they received them.

Mr. Berke: All right, we will accept that.

* * *

Cross-Examination

By Mr. Ernst:

Q. Mrs. Friend, I gather that Leo's statement to you sort of left you speechless that morning?

A. Right!

Mr. Berke: Now, just a moment. O.K., withdraw the objection.

Trial Examiner Ruckel: Go ahead.

Q. (By Mr. Ernst): Did Leo seem to be himself that morning?

A. Beg your pardon?

Q. Did Leo seem to be himself that morning or——

A. No, he did not.

Q. Was he frightfully excited?

A. He was very much so.

Q. And at the time that you talked to him at 8:00 p.m. the other night, or the night before, was it?

(Testimony of Lillie I. Friend.)

A. That was Sunday night before I came to work there Monday morning.

Q. At that time he made it clear to you, didn't he, that your job was there, and that he wanted you to come there? You had no misunderstanding as to that? [558]

A. I had no misunderstanding, and I went down in good faith to go to work the next morning. [559]

* * *

Q. Who usually tells you what to do in the teletype department?

A. The day supervisor, or Mr. Argabright, he was day, serving [560] as day supervisor, and Mr. Bash, of course, was the Chief Operator.

Q. Either one of those would tell you what to do?

A. That is right. [561]

* * *

Q. Now, as I understand it, when Leo Bash was talking to you that morning he said things which you have described here as trying to justify himself in firing Chuck Jones?

A. Yes. He said, "I swear by God——" and he referred in a way that he was just trying to justify himself for this act of firing Chuck Jones, but the exact words, I don't recall what he said. [562]

* * *

LESLIE T. WHEELER

a witness called by and on behalf of the General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Berke:

Q. Will you please give the reporter your full name and address?

A. Leslie T. Wheeler, 2763 Bush Street, San Francisco.

Q. Mr. Wheeler, were you ever employed by Globe Wireless? A. Yes, I was.

Q. When were you hired by that company?

A. October 13, 1947.

Q. And when were you last employed there?

A. January 21, 1949.

Q. What job did you have in January of 1949 with that company? A. Teletype operator.

Q. Now, when you first went to work at Globe, were you a member of any union?

A. That is right.

Q. You were? [565]

A. Yes. When I started to work for Globe, I joined the union.

Q. You joined when you commenced working?

A. That is right.

Q. What union did you join?

A. American Communications Association. [566]

* * *

(Testimony of Leslie T. Wheeler.)

Q. Did you write up any minutes of the shop committee meetings after the committee had met with management? [567]

A. Yes, I did.

Q. And what did you do with those minutes after you had written them up?

A. I posted them on the ACA bulletin board.

Q. Did you take notes or minutes while the committee was meeting with management?

A. Yes, I did.

Q. Who were some of the management representatives that you met?

A. General Boatwright, Mr. Brown, the Vice-President, Mr. McPherson, the District Manager, Mr. McCormick.

Q. Who is Mr. McCormick?

A. I don't know what position he holds. I just saw him around there.

Q. In the Executive Officers?

A. Well, he worked across the hall in the offices. Just what his job is, I don't know. And, let's see. That is all I can think of right now. [568]

* * *

Q. (By Mr. Berke): Now, do you remember an incident concerning the bulletin board that the union had in the shop? A. Yes, I do. [569]

Q. When did that incident take place?

A. It was on the day watch and the Chief Operator ordered the bulletin board to be taken down.

Q. Can you tell us about when that was?

A. It was, well, the very next day after the contract expired or one or two days, very close.

(Testimony of Leslie T. Wheeler.)

Q. That is, after August 15, 1948?

A. Yes.

Q. Go ahead.

A. And it was on the day watch and I happened to be the shop steward on the day shift at that time, so I went over to Mr. Bash and asked him why the bulletin board was being taken down, and he said, "Since the contract expired, there is no more union here and you don't need an ACA Union bulletin board."

So I proceeded to talk to him some more about it. I said, "We do need a bulletin board to disseminate information correctly to the employees."

And he said, "Well, if you get together with the employees and meet with management as a group of employees but not as a union, you probably can get the bulletin board back."

So I started a petition circulating for the bulletin board to be put back up and we also went and met with management the next day about it.

Q. Were you one of those that met with management about it? A. Yes. [570]

Q. And did you subsequently have the bulletin board restored? A. Yes, we did.

Q. Do you recall the Sunday preceding the day of your discharge?

A. The Sunday preceding? Yes, I do, yes.

Q. Did you get a telephone call on that day?

A. Yes, I did.

Q. Who did you get the call from?

A. Leo Bash.

(Testimony of Leslie T. Wheeler.)

Q. How do you know it was Leo Bash that was telephoning? A. He identified himself.

Q. What did he say?

A. He said, "Les, this is Leo Bash."

He said, "The gang went on sit down strike down here and I fired them all."

"So," he said, "they have been fired, so they will get two weeks pay in lieu of notice."

He said, "You were off duty and you weren't involved, so you won't get the two weeks' pay."

Q. Did he say anything more that you recall?

A. He said, "No hard feelings."

And I said, "O.K., Leo," and I hung up.

Q. Is that all you recall of the conversation?

A. That is about it, I guess.

Q. If you don't recall, you can say so. [571]

A. I don't remember anything else.

Q. Have you exhausted your memory on that?

A. He fired me. That is about all.

Q. That is all you remember? Does it refresh your memory if I tell you that there was some reference to two strikes on you?

* * *

Q. (By Mr. Berke): What did he say about that?

A. He said, "You have two strikes against you anyhow, because of your race."

Trial Examiner Ruckel: Because of what?

The Witness: Because of your race.

Q. (By Mr. Berke): Now, is that all the conversation?

(Testimony of Leslie T. Wheeler.)

A. Yes. He just said, "No hard feelings," and hung up.

Q. What time were you due to report for work?

A. Midnight that Sunday night.

Q. Before you received the telephone call from Leo Bash, had you planned to go to work at midnight?

A. Yes. I had even made my lunch.

Q. You had made your lunch preparatory to taking it to work with you?

A. Yes. [572]

Q. And did you go?

A. No, I didn't.

* * *

Q. (By Mr. Berke): Why didn't you go?

A. Because after what happened, I knew that I was fired.

Q. Did you go in to see Mr. Bash at any time after that?

A. Yes, I went in on Monday morning on my own time.

Q. At what time?

A. 8:00 o'clock.

Q. And where did you go at that hour?

A. I walked in the door and looked to see if my time card was there and it wasn't there, and I went in the cloak room with a couple of other kids and Leo Bash came over and he started raving like a madman and said that I was fired again because I didn't show up for work last night.

Q. Who were some of the others with you?

A. Paul Guerrero and Lillie Friend.

Q. Did you meet them in the cloak room or had you met them elsewhere?

(Testimony of Leslie T. Wheeler.)

A. No, they were coming up the same time I was.

A. And you walked in the door together? [573]

A. That is right.

Q. Tell us what transpired in the cloak room?

A. Leo came in and started raving. He fired Paul Guerrero, because Paul Guerrero didn't—

* * *

The Witness: He told Paul Guerrero he was fired because he didn't bring in a medical certificate for being sick, and he told me I was fired because I didn't show up for work last night.

Trial Examiner Ruckel: The last night being Sunday night?

The Witness: Sunday night.

Trial Examiner Ruckel: Were you supposed to work on Sunday night?

The Witness: Yes, I was. And he also fired Lillie Friend.

Mr. Ernst: I object to that and ask that it be stricken.

Q. (By Mr. Berke): What did he say to Mrs. Friend, as near as you can recall?

A. If I remember correctly, he said, "Your job is waiting for you, Lillie."

And Lillie said, "Well, Leo, how do you expect me to go to work with my friends being fired."

And as soon as she started protesting their being fired [574] he fired her, too.

Mr. Ernst: I again ask that it be stricken and that he say what Bash said after Lillie Friend got through speaking, if he said anything.

(Testimony of Leslie T. Wheeler.)

Trial Examiner Ruckel: Use his words as near as you can; after she finished speaking, Leo said what?

The Witness: "You go outside and try and make me reinstate Chuck Jones, Bruce Risley, and company." That is about as near as I can remember.

Q. (By Mr. Berke): You are now quoting Bash? A. Yes.

Q. I show you a document marked General Counsel's Exhibit 13 for identification and ask you if you have seen that before and tell us what it is.

A. Yes, I have. This is a telegram Mr. McPherson sent me after I was fired.

(Thereupon the document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

Mr. Ernst: That is what I have been looking for all this time. Why didn't you tell me you had it?

Mr. Berke: Why didn't you ask?

Q. (By Mr. Berke): Where did you get this telegram?

A. On the picket line Monday afternoon.

Q. How did you get it on the picket line?

A. A messenger handed it to me. [575]

Q. Who was the messenger, do you know?

A. He is a stock clerk at Globe Wireless.

Q. Do you know about what time it was on the picket line on Monday?

A. About 2 or 3 o'clock in the afternoon.

Mr. Ernst: Has the witness seen this document?

(Testimony of Leslie T. Wheeler.)

Mr. Berke: I showed it to him. He said yes, while you were hunting for it.

Mr. Ernst: No, I stopped hunting as soon as you produced it.

Q. (By Mr. Berke): Did you respond to this telegram? A. No, I didn't.

Q. Have you been back to work since?

A. No, I haven't. [576]

* * *

GENERAL COUNSEL'S EXHIBIT No. 13

Western Union

[Telegram]

1949 Jan 24 PM 12:30

SFA156 PD-San Francisco Calif 24 1156A

Leslie Wheeler

2763 Bush Street APD D

The Chief Operator Advises Me He Discharged You Today After You Came Through the Picket Line to Report to Work. Under the Circumstances I Would Like to Review Your Discharge With You and Return You to Work If There Was Not Sufficient Cause for the Discharge. Will You Telephone Me to Arrange for a Meeting Today or Tomorrow Is Preferred.

J. B. McPHERSON,
Globe Wireless Ltd.

Received July 28, 1949.

(Testimony of Leslie T. Wheeler.)

Mr. Brotsky: Excuse me just one minute.

Q. (By Mr. Brotsky): You were handed a telegram while you were doing what?

A. Picket duty.

Q. In front of the company?

A. That is right.

Mr. Ernst: I won't bother to move to strike. It is completely immaterial.

Cross-Examination

By Mr. Ernst:

Q. Mr. Wheeler, shortly after you had this discussion with Mr. Bash in August with respect to the bulletin board, did you and the other members of the shop committee take that matter up with Mr. McPherson? A. Yes, we did. [578]

* * *

RESPONDENT'S EXHIBIT No. 11

Agreement

Agreement made this 15th day of August, 1947, by and between Globe Wireless Ltd., a Nevada corporation, hereinafter referred to as the "Company," and the American Communications Association, C.I.O., hereinafter referred to as the "Union."

Witnesseth

General Provisions

1.1 Union Recognition.

The Company agrees to, and hereby does, recognize the Union as the sole collective bargaining

(Testimony of Leslie T. Wheeler.)

agent in all matters pertaining to rates of pay, wages, hours of employment, and other conditions of employment for all employees of the Company in the continental United States and Hawaii, but excluding executives, confidential employees, and department heads engaged in a purely supervisory capacity with power to hire and discharge.

1.2 Rights of Members.

The Company agrees that all employees of the Company covered by this Agreement shall be members of the Union in good standing, and each such employee who is not now a member of the Union shall make application for membership therein, but no employee on the payroll as of the date of signing of this Agreement who is not now a member of the Union shall be discharged by the Company for non-membership therein where he applies for membership in the Union and is not admitted to membership.

Whether a member is in good standing shall be determined by the Union.

1.3 Bulletin Boards.

The Company agrees that the Union may install and maintain a bulletin board in each office of the Company in a place accessible to employees. Such bulletin board shall be placed so that employees may easily read notices posted thereon. The Company assumes no responsibility for notices appearing on such bulletin boards.

(Testimony of Leslie T. Wheeler.)

1.4 Non-discrimination.

The Company agrees that it will not discriminate against any employee because of any work in, or affiliation with, the Union or other Union activity. The Union agrees that there shall be no Union activities on Company operating premises, except for the collection of dues, and no Union activity of any type on Company time. No collection of dues shall be made on Company property by an employee of any other Company.

The Company agrees that there shall be no discrimination between male and female employees. The principle of equal opportunity and equal pay shall prevail.

1.5 Recognition of Union Officers and Representatives.

The Company shall recognize and deal with only the following officers:

International Officers

International Representatives

Local Secretaries

Shop Stewards

on matters pertaining to wages, hours and working conditions in the administration of this Agreement. Provided, however, that an employee having a grievance may first attempt to adjust the matter with his immediate supervisory Company superior. (See 1.7 (1)).

(Testimony of Leslie T. Wheeler.)

The Union shall notify the Company of the names of the above officers and of any changes.

* * *

1.10 Work Stoppages.

There shall be no lockouts, strikes, slow-downs, sit-downs, walkouts or stoppages of work for any reason during the life of this Agreement.

The Union agrees that none of its members employed by the Company will participate in or aid in the accomplishment of anything which might in any way impede the carrying on of operations and the normal functioning of the Company.

* * *

1.12 Governmental Directives.

All employees covered by this Agreement shall comply with all present and future orders of the Federal Communications Commission.

* * *

1.15 Hiring.

1. Whenever a vacancy occurs in any classification covered by this Agreement the Company shall request the Union to fill such vacancy, informing the Union as to the classification in which such vacancy exists, and the probable length of employment. The Union agrees to furnish the Company with acceptable personnel competent and qualified in the judgment of the Company to perform the work required. In the event the Union is unable to furnish the Company with such personnel within three (3) days of

(Testimony of Leslie T. Wheeler.)

the time Company has made request to the Union, then the Company shall be free to fill such vacancy from any source, provided that if the Company fills the vacancy from a source, other than the Union, the Union shall be notified within three (3) days.

2. The definitions and qualifications in the Classifications and Wages section of this Agreement shall determine qualifications of applicants for employment.

3. The Company shall not be compelled to re-employ any employee who has been discharged for cause and whose discharge was not challenged in accordance with Section 1.19 Discharge of Employees.

* * *

1.19 Discharge of Employees.

In the event of the discharge of any permanent employee who is covered by this agreement, the Company shall give two weeks notice in writing to both the employee and the Union. In the event such an employee is not given two weeks notice of his intended discharge, he shall receive two weeks pay in lieu thereof and the Union shall be so notified. Whenever an employee is discharged by the Company or has been served with notice of intended discharge, the Union may initiate with the Company discussion of the matter of the discharge of any such employee at any time within two (2) weeks after written notice of discharge has been sent to the Union. In the event the Union asks reinstatement

(Testimony of Leslie T. Wheeler.)

of such discharged employee and such reinstatement is refused by the Company, the Union, in its discretion, may ask for arbitration which shall be held in the manner hereinafter provided. The arbitrator shall have power to direct that an employee who has been discharged shall be reinstated with or without loss of pay or seniority.

* * *

1.38 Check-off.

The Company agrees to deduct from the paycheck of each employee covered by this Agreement who is a member of the Union such dues, as may be due the Union and to forward same to the Union once each month, provided such employee has authorized the Company to do so.

* * *

2.4 Automatic Printer Operator.

An employee hired by the Company to operate a radio or landline automatic multiplex or teletype printer. An automatic printer operator may also be required to perform duties of lesser classifications.

Minimum Weekly Wage

Start.....	\$47.02		
After 6 months ..	\$47.62	After 5 years...	\$57.31
After 1 year	52.07	After 6 years...	57.66
After 18 months..	53.91	After 7 years...	58.01
After 2 years ...	55.75	After 8 years...	58.36
After 3 years ...	56.27	After 9 years...	58.71
After 4 years ...	56.79	After 10 years...	59.06

(Testimony of Leslie T. Wheeler.)

2.5 Teletype Printer Operator.

An employee hired by the Company to operate a teletype printer and who may be required to perform clerical duties or other duties in a lower classification.

Minimum Weekly Wage

Start.....	\$40.25	
After 6 months ..	\$42.65	After 5 years...\$51.28
After 1 year	45.18	After 6 years... 51.56
After 18 months..	47.60	After 7 years... 51.84
After 2 years ...	50.02	After 8 years... 52.12
After 3 years ...	50.44	After 9 years... 52.40
After 4 years ...	50.86	After 10 years... 52.68

* * *

Q. (By Mr. Ernst): Now, after that meeting of August 30th, Mr. Wheeler, did you participate in drawing up a report as to what had occurred at the meeting?

A. August 30th? What meeting was that?

Q. I am sorry. I will try to pick up. That is the meeting that had to do with the union bulletin board, the activities of supervisory employees, and maybe one or two other points. Let me show you a copy of it and perhaps that will simplify it.

Mr. Ernst: May I have this marked, please?

(Thereupon the document above referred to was marked Respondent's Exhibit No. 12 for identification.) [582]

Mr. Berke: May we go off the record a moment?

(Testimony of Leslie T. Wheeler.)

Trial Examiner Ruckel: Off the record.

(Discussion off the record.)

Trial Examiner Ruckel: On the record.

Now, your question is what, Mr. Ernst?

Q. (By Mr. Ernst): Do you recall that having been posted on the union bulletin board after that meeting that is referred to in it?

Mr. Brotsky: Just a moment. I thought the question was whether he prepared this particular document after the meeting, and I will object to the previous question.

Mr. Ernst: I believe I got an answer to the previous question and I am now asking a question.

A. I think I do remember this.

Q. (By Mr. Ernst): Do you recall that having been posted on the bulletin board?

A. I think so.

Q. That was on the union bulletin board?

A. Yes.

Q. Were you one of the three people that represented the employees at that particular meeting?

A. Yes, I was.

Q. Did you help draw up the report?

A. This report here?

Q. Yes. [583] A. I don't think so.

Q. This then is not one of the meetings that you took the notes at that you talk about?

A. I don't remember now for sure. I went in to so many of them, it is hard to pin it down.

(Testimony of Leslie T. Wheeler.)

Q. I would like to have you look particularly at the paragraph marked number two then and state whether or not that is your recollection of the union's position with respect to what happened at that meeting?

A. What was your question? What was the question about?

Q. In substance, whether that accurately reports the union's position as to what happened at the meeting? A. Yes.

Mr. Ernst: I will offer it in evidence, Mr. Examiner.

Mr. Berke: Objected to. I don't see that it is relevant. In fact, it is immaterial.

Trial Examiner Ruckel: Let me see it.

Mr. Ernst: The relevancy, Mr. Examiner, is that this shows the taking up of these occurrences by Bash and other so-called supervisory employees up until August 30th in the grievance procedure and the apparent attempt to settle it at that time.

Trial Examiner Ruckel: It may go in.

(The document heretofore marked Respondent's Exhibit No. 12 for identification, was received in evidence.) [584]

* * *

(Testimony of Leslie T. Wheeler.)

RESPONDENT'S EXHIBIT No. 4

Union-Management Meeting

November 3, 1948

Present for the Company:

Mr. N. Brown,
Mr. McPherson,
Mr. McCormick.

Present for the Union:

Malcolm Parks, Shop Chairman,
Chuck Jones,
Bruce Risley,
Dave Sheaffer,
Les Wheeler.

The meeting was opened with discussion regarding two people attending who were not elected members of the shop committee. The union contended the above five people were elected by the employees and therefore were the only authorized representatives of the Globe employees. The company said they were "observers." The union agreed that meetings had always been open to observers but made it clear that the faction which the two people at one time supported had been defeated, repudiated and humiliated by a majority vote of the employees in a recent NLRB election. The union regarded these people as "company observers" since they do not represent the employees and were not there at the request of the shop committee.

(Testimony of Leslie T. Wheeler.)

January 8, 1949

(Copy Original Mimeo.)

All Globe Members:

“On December 2nd, 1948, the Shop Committee sent a letter to Mr. Neil Brown requesting that he confirm or deny Mr. McPherson’s interpretation of Mr. Brown’s letter of November 6th, 1948, namely that the Company would not meet with the Shop Committee for the purpose of settling grievances. In its letter, the Committee also pointed out the change in policy of the San Francisco Employers’ Council, the Waterfront Employers’ Association and the Pacific American Shipowners Association with regard to negotiating with the waterfront and maritime unions which have refused to comply with the voluntary provisions of the Taft-Hartley Law, and urged the Company to alter its policy in line with that of the employer associations named, to sit down with the union and negotiate a new contract. The Committee pointed out that this would benefit both Company and employees.

“Having received no reply from Mr. Brown by December 14th, Malcolm Parks, Chairman of the Shop Committee, sent a note to Mr. Brown requesting a reply. On Saturday, December 18th, Brown called Parks requesting an extension of time until Monday, December 20th, to reply to the Committee’s letter. On Monday Mr. Brown called Parks stating that Mr. McPherson was unable to be in the office and that he would have the answer for us on Tuesday afternoon, December 21st. Nothing fur-

(Testimony of Leslie T. Wheeler.)

ther was heard from Mr. Brown or any other official of the Company in this matter until Thursday, December 23rd. On that day, Mr. Brown called the Secretary of the Union, Ed. Barlow, to wish him a merry Christmas and a happy New Year and at the time, expressed the hope that "we will be able to get together soon." The following day, Christmas Eve, Mr. Brown approached several members of the Shop Committee in the operating room with similar greetings, and again expressed himself in such a way that those to whom he spoke were under the impression that the Company would meet with the Committee either the following week or the week following New Years.

The Shop Committee met on Monday, December 27th. In anticipation of a grievance meeting with the Company, the Committee discussed outstanding grievances to be brought up in the meeting with the Company. Brother Parks was given the responsibility of contacting Mr. Brown for a date for the meeting. On Thursday, December 30th, Parks called Mr. Brown to arrange for the meeting and was informed that Mr. Brown would meet with the Committee and that Mr. McPherson had left a note in the operating room for Parks requesting him to meet with Mr. Brown the following day, Friday. On Friday, Parks was informed by Mr. McPherson that Mr. Brown was ill and asked that the meeting be postponed to Monday. On Monday,

(Testimony of Leslie T. Wheeler.)

January 3rd, Parks went in prepared to meet with Mr. Brown but was informed that he was still ill. However, Mr. McPherson stated that he was prepared to go ahead with the meeting, that he had talked to Mr. Brown on the telephone and was prepared to present the Company's position.

* * *

In the meeting with Parks on January 3rd, the Company confirmed its policy of refusing to meet with the Shop Committee to settle grievances and to meet with the negotiating committee to negotiate a new contract. The Company thus confirms that it is its policy to refuse to cooperate with its employees. The Company has withdrawn all cooperation.

On Tuesday, January 4th, 1949, the Shop Committee met and came to the conclusion that Globe employees had leaned over backward long enough in trying to cooperate with the Company, with the only result being more evidence of bad faith on the Company's part. Therefore, the Committee determined that the only course that could be followed is to put into effect the program adopted by the Globe employees in their meetings of November 23rd, 1948.

The Shop Stewards will contact each member for specific details of the program and how it is to be put into operation. Your utmost cooperation with your Shop Committee now will insure the success of the program. Our aim is to protect our jobs,

(Testimony of Leslie T. Wheeler.)

our wages, our hours and our working conditions.
United we can win.

ACA/GLOBE SHOP
COMMITTEE.

Received July 28, 1949.

Q. (By Mr. Ernst): Now, on the Sunday afternoon or evening of the 23rd, I want to find out first what your schedule of shifts was for your work at that time; in other words, what shifts you worked, which dates? A. You mean in January?

Q. From January 16th, I think, on is when the new watch list went on, isn't that correct?

A. My schedule was from midnight to eight in the morning.

Q. What days of the week?

A. Monday through Friday.

Q. Monday through Friday?

A. Yes. [586]

Q. Now, at what time did Leo Bash call you on Sunday?

A. I would say around 7:30, 8 p.m.

Q. Did he attempt to explain to you what had happened?

A. He said, "The gang went on sit-down strike."

Q. Now, as I recall, he said something about "two strikes against you because of your race," or something of that sort? A. That is right.

Q. Do you recall any similar comment to that

(Testimony of Leslie T. Wheeler.)

having been made by Bash to you, or you to Bash previously? A. No.

Q. Now I would like to have from you a statement as to who said what leading up to this statement about the "two strikes," in other words, what Bash said and what you said, and what Bash said at that time?

A. I picked up the phone, and he said, "Les Wheeler?"

I said, "Yes."

He said, "This is Leo Bash." He said, "The gang went on sit-down strike down here, and I fired them all." He said, "Now they will get two weeks because they got fired." He said, "You won't get two weeks," he said, "You weren't here, you weren't on duty, you weren't involved, so you won't get the two weeks pay but—" he said, "You got two strikes on you anyway."

Q. Wait a minute! He went right on and said——

A. When he finished he said, "No hard feelings," and I [587] hung up.

Q. You didn't say nothing but "okay"?

A. No, I didn't argue.

Q. You didn't say nothing but "Hello?"

A. Yes.

Q. Yes, "this is Les Wheeler," and "okay" at the end of the conversation?

A. That is right. I couldn't get a word in edgewise with him talking.

(Testimony of Leslie T. Wheeler.)

Q. Now, when you arrived the next morning at eight o'clock why did you go into the office?

A. That was the first chance I had to see Leo. I just talked to him on the phone, I wanted to get this straight about being fired, also to protest the discharge of the rest of the people.

Q. When did you decide that you wanted to protest the discharge of the others?

A. As soon as I could get to see him.

Q. I mean when did you reach the decision in your own mind that you wanted to protest the discharge of the others?

* * *

A. Well, I don't know. I guess I thought it over in my [588] sleep during the night.

Q. (By Mr. Ernst): You mean you slept from midnight to eight when you normally would have gone to work?

A. I didn't work that night.

Q. I mean hadn't you slept already before that?

A. No; I slept in the morning, yes, but I was up at that time of night, so I went to bed.

Q. Now, did you talk to the people on the picket line before you came in that morning?

A. When I went in the picket line hadn't been established.

Q. I see. And, as I understand it, you went from the main door into the cloakroom?

A. That is right.

Q. And did you hang up your hat?

(Testimony of Leslie T. Wheeler.)

A. No.

Q. Were Lillie Friend and Paul Guerrero in there with you? A. Yes.

Q. What did you talk about at that time?

A. Leo did all the talking.

Q. Wait a minute. I mean before Leo arrived?

A. He was there practically right at the same time we got there. We walked in the cloakroom; he came right on over.

Q. You didn't have a chance to talk about anything then before he came in?

A. No, no general conversation, no. [589]

Q. Well, what I want to know is was there any conversation or not among you and Guerrero and Friend prior to the time Bash arrived?

A. If there was I don't remember anything particularly. There might have been, but——

Q. Now, to the best of your recollection, what was the first thing that Leo said? You don't have to use his loud voice.

A. That is impossible! Let me see, I think he said to Lillie Friend, "Your job is waiting for you if you want it."

Q. Yes.

A. And he turned, he turned to Paul and I, and he said to Paul, he said, "Have you got a medical certificate?"

Paul said, "No, I was just sick one day," or something, "I didn't see a doctor, and I don't have a certificate."

(Testimony of Leslie T. Wheeler.)

He said, "You are fired if you don't have a certificate from your doctor."

Q. Did he say or until you get a certificate?

A. I don't remember.

Q. You can't recall that detail?

A. No, he was pretty definite in firing Paul, I remember that.

Q. Now, did he seem surprised to see you there?

A. Well, I don't know whether he was surprised or not. I couldn't say. [590]

Q. But the first thing that he said to you was, "Why didn't you come to work last night"; is that right? What was the first thing he said?

A. He said, "you are fired because you didn't show up for work last night."

He said, "Get out, you are not getting any more money. You don't work here."

Q. Now, that was then everything that you recall as having occurred at that time?

A. Yes, there might have been other things said, but I can't remember them all.

Q. You can't recall anything of any consequence that was said either by Lillie Friend or Paul Guerrero or yourself or Leo Bash?

A. The main thing I remember was Leo firing us because he was doing practically all the talking. Lillie tried to protest the discharge, but he didn't give her much chance, he fired her too as soon as she started to protest the discharge.

Q. Protesting what discharge?

(Testimony of Leslie T. Wheeler.)

A. Chuck's and everybody else that was fired before.

Q. Did you get the chance to make the protest that you wanted to make? A. No.

Q. Now, previous to this time you had dealt with Mr. McPherson, particularly at this August 30th meeting, hadn't you? [591] A. Yes.

Q. And you thought at that meeting that Mr. McPherson would reverse Mr. Bash, or advise you that he was going to change Mr. Bash's position on the subject, didn't he?

A. That is what he said.

* * *

Q. (By Mr. Ernst): Now, had you also heard that Mr. Brown's [592] door was open to the employees? A. Yes, I had heard that.

Q. Now, your purpose of going down there was to, as I understand it, to protest these discharges?

A. Yes, more or less to protest the discharges, and also get clarification on my position.

Q. In other words, you wanted to find out what was up? A. That is right.

Q. And what had given rise to all of these discharges? A. That is right.

Q. And why they had done this to you, and what was wrong down there, is that correct?

A. That is right. [593]

* * *

Q. (By Mr. Ernst): Why didn't you see either Brown or McPherson or General Boatwright about it? [594]

(Testimony of Leslie T. Wheeler.)

A. About—after I got the telegram you mean?

Q. Yes. No, no, this morning?

Trial Examiner Ruckel: After you received the telegram? Isn't that what you mean?

Mr. Ernst: No, I am talking now about the first morning when he came in and he only saw Leo Bash, and he apparently got a very quick brushoff there.

Mr. Brotsky: Just a moment. I will object to that.

Trial Examiner Ruckel: Objection sustained.

Mr. Ernst: All right.

Q. (By Mr. Ernst): Now, after you came in and saw Leo Bash why didn't you bother to see McPherson or somebody higher up?

Mr. Brotsky: Same objection.

Trial Examiner Ruckel: Objection sustained.

Q. (By Mr. Ernst): You did not make any effort to see anyone higher up? A. No.

Mr. Berke: I ask that be stricken.

Trial Examiner Ruckel: That may stand. Let's get ahead. [595]

* * *

Q. In other words, what time did you get the telegram from Mr. McPherson?

A. The first copy I received Monday afternoon about, between two and three on the picket line.

Q. Thereafter you made no effort to see Mr. McPherson or anybody else in the company?

A. No. [596]

* * *

(Testimony of Leslie T. Wheeler.)

Q. Now I will show you Respondent's Exhibit 5 for identification and ask you if that was distributed among the ACA employees of Globe in the early part of January of 1949?

* * *

Mr. Ernst: If it is stipulated that it was distributed among the employees of the ACA committee, fine.

Trial Examiner Ruckel: It is in the record. [601]

* * *

PAUL GUERRERO

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

The Reporter: Your name, please?

The Witness: Paul Guerrero.

By Mr. Berke:

Q. Where do you live, Mr. Guerrero? [604]

A. 1315 Grove.

Q. In what city? A. Pardon?

Q. In what city? A. San Francisco.

Q. Will you please speak up so that we can hear you? Were you ever employed by Globe Wireless?

A. I was.

Q. Talk up.

* * *

(Testimony of Paul Guerrero.)

Q. (By Mr. Berke): When were you first employed by Globe? A. February 26, 1947.

Q. And what was the date of your last employment there?

A. January the 24th, that was on a Monday.

Q. 1949? A. 1949.

Q. What position did you hold in January of 1949 at Globe? A. I was a teletype operator.

Q. Prior to getting employment at Globe were you a member of any union?

A. I was a member of the ACA, CIO.

Q. And did you maintain membership in that organization when you went to work at Globe? [605]

A. I did. [606]

* * *

Q. Do you recall January 21, 1949?

A. Yes; I think it was on a Friday, I think.

Q. Did you attend a union meeting that night?

A. I did.

Q. And at that meeting did you learn of the discharge of Charles Jones? A. That is right.

Q. Did you work that day?

A. No; I was off; my regular days off were Friday and Saturday.

Q. And when was the next day you were due to report to work? A. Sunday morning.

Q. Do you recall the night before the day you were due to report to work?

A. Yes, I was not feeling very good. [608]

Q. What night was that?

A. That was Saturday night.

(Testimony of Paul Guerrero.)

Q. Could that be the 23rd, January 23rd? 22nd, rather?

A. It must have been the 22nd, at night.

Q. Yes. Where were you? A. I was home.

Q. You say you weren't feeling very good?

A. No; there was a lot of flu and colds going around at that time.

Q. Did you have a cold? [609]

* * *

A. I had a cold.

Q. Did you do anything about—strike that.

What did you do that evening while you were home?

A. Well, I had some friend that was staying there, that was at my house. I had him call up and notify the office that I wouldn't be able to report in the morning.

Q. Was this call made in your presence?

A. It was.

Q. And whom did you tell this friend to call?

A. I told him to ask for the supervisor.

Q. And were you there when the call was made?

A. Yes, I was.

Q. Did you hear this friend ask for the supervisor? A. Yes, and a man answered the phone.

Q. How do you know that it was a man that answered the phone?

A. Well, I was close enough to the receiver.

Q. Could you hear the voice over the receiver?

A. Yes, I did.

(Testimony of Paul Guerrero.)

Q. Were you able to recognize whose voice it was? A. Pretty hard off-hand.

Q. You don't know?

A. No, I couldn't swear to it.

Q. All right. What did you hear this friend tell whoever answered the phone?

A. Well, he asked would I be in Monday morning for sure, and [610] he said, "Yes." I told him to say "Yes."

Q. Was that all your friend said?

A. That is all. Well, he told him I would be in Monday.

Q. All right. Did anything happen the next day, Sunday, the day you were supposed to report?

A. Yes, I was in bed, and Leo Bash called me up about ten o'clock in the morning.

Q. How do you know it was Leo Bash that called you? A. No mistake there.

Q. You mean you recognized his voice?

A. Sure; anybody would.

Q. What did Bash say to you?

A. Well, he said, "This is Leo." He told me to come down to work, show up. I told him I was sick.

Q. What did he say to that?

A. He said to show up anyway.

Q. Tell us what the rest of the conversation was in his words and your words as near as you can tell us.

A. He said to show up, "Come down anyway." He told me there was no picket line down there. I said, "Well, hell, I can't help it, I am sick."

(Testimony of Paul Guerrero.)

Q. What did he say to that?

A. Well, he said to show up anyway, to come down, and then he hung up.

Q. Is that all the conversation you remember?

A. Yes, I think that is about all.

Q. That you remember?

A. That I remember.

Q. Have you exhausted your memory on that?

A. Well, he said,—oh, no, he said something else.

Q. What was it?

A. He told me—I overlooked it, I forgot it, but during this conversation about telling me to show up, he was so insistent, I kept telling him I was sick, I was sick in bed. He says, well, he says, “I am not going to stand for none of Barlow’s tricks, you show up, you come down and show yourself.”

I said, “Hell, I can’t help it.”

Q. Who was this Barlow he referred to?

A. The Secretary of the Union.

Trial Examiner Ruckel: Employed by the Company?

The Witness: No, sir, he was the Secretary of the Union, he was not employed by the union—I mean by the company, he was Secretary of the Union.

Q. (By Mr. Berke): Now, in this conversation with you did Bash say anything about why you hadn’t reported being ill, did he bring that up, that he hadn’t got the report about you being ill?

A. No, he didn’t mention it at all. [612]

Q. Did you report to work Monday at the usual hour?

(Testimony of Paul Guerrero.)

A. I reported to work, yes, sir, 8:00 o'clock.

Q. Where did you go?

A. I went up to the card rack to stamp in, and I stamped in.

Q. Did you meet anybody when you went in?

A. Yes, I met Les Wheeler and Lillie Friend.

Q. Where did you meet them?

A. I met them in the cloak room there.

Q. And did you say you went to the time card rack?

A. I did.

Q. Had you previously come up the elevator with Wheeler and Friend?

A. Yes, I did.

Q. Did you find your card in the card rack?

A. Mine was the only one of the three.

Q. What did you do with it?

A. I stamped in.

Q. You say yours was the only one of the three there?

A. Just one of the three, Wheeler's, myself, and Friend—I mean mine was the only card.

Q. And Wheeler's and Friend's were not there?

A. No.

Q. And after you clocked in, what did you do?

A. Well, I went to put my hat away, coat.

Q. Where did you go? [613]

A. I went to my locker. Each had their own individual locker.

Q. And while you were there, did anything happen?

(Testimony of Paul Guerrero.)

A. Oh, yes, just about that time Leo walked in.

Q. That is Leo Bash? A. That is right.

Q. All right. What happened when he came in?

A. He just said, "Have you got a doctor's certificate"?

I said, "No, what for"?

He said, "Well, for yesterday."

I said, "I never had to have a doctor's certificate for being absent one day before."

He never asked me for one before.

Q. What did he say to you?

A. He said, "Well, if you haven't got a doctor's certificate, you are through."

I said, "What do you mean through"?

I said, "Am I fired, dismissed, suspended, or what"?

He said, "Well, you call it. You aren't getting paid."

Q. He said, "You call it. You aren't getting paid"? A. That is right.

Q. Did you hear him talk with Les Wheeler?

A. Yes. I was around. I was still there.

Q. What did you hear him say?

A. I can't recall very well. I can't recollect.

Q. As best as you recall.

A. I don't know. He asked him something about where he was and where he had been or hadn't shown up or something, I don't exactly remember.

Q. Did you hear him talk to Mrs. Friend?

A. Yes. He told her, "Lillie," he said, "you have got your job inside, if you want to work."

(Testimony of Paul Guerrero.)

Q. Did you hear what she said?

A. Well, she started—she said, “I want to talk to you about the rest of the employees being fired.”

He says, “Well, I don’t want to talk to you about it. I can’t talk to you about it.” I don’t know what he said, something about not being able to talk to her about it.

Q. Were you there when he discharged her?

Mr. Ernst: I object.

A. Yes.

Mr. Ernst: I withdraw it.

A. Yes, I was there.

Q. (By Mr. Berke): What did you hear him say in that connection?

A. I can’t quote him. I don’t recall very well.

Q. I show you a document marked General Counsel’s Exhibit 14 for identification, and ask you if you have seen that before and what it is.

(Thereupon the document above referred to was marked General Counsel’s Exhibit No. 14 for identification.) [615]

A. Yes, I received that at home about noon.

Q. (By Mr. Berke): Did you respond to this?

A. No, not immediately.

Q. Did you—go ahead.

A. I answered Mr. McPherson a letter.

Q. Did you get a copy of Exhibit 14 for identification later on?

A. Yes, I got a carbon, the original carbon copy of it.

(Testimony of Paul Guerrero.)

Q. Where were you when you got it?

A. I was out on the picket line somewhere around 2:00 o'clock.

Q. Who brought it out to you?

A. Don McPherson, the stock room clerk.

Q. Is he employed by Globe?

A. Yes, he is. [616]

* * *

GENERAL COUNSEL'S EXHIBIT No. 14

Western Union

[Telegram]

SFA 153 PD-San Francisco, Calif. 24 1156A

Paul Guerrero,

1315 Grove St.

The Chief Operator Advises Me He Discharged You Today After You Came Through the Picket Line to Report to Work. Under the Circumstances I Would Like to Review Your Discharge With You and Return You to Work if There Was Not Sufficient Cause for the Discharge. Will You Telephone Me to Arrange for a Meeting Today or Tomorrow if Preferred.

J. B. McPHERSON,

GLOBE WIRELESS LTD.

Received July 28, 1949.

G. C. 14 (Rec'd)

(Testimony of Paul Guerrero.)

Q. (By Mr. Berke): Now, had you been absent from your work before this particular occasion?

A. Yes, I was absent about a week before that.

Q. For how long? [617]

A. One day.

Q. And what was the reason for your absence then? A. I was sick.

Q. And did Bash ask you on that occasion when you returned for a doctor's certificate?

A. No, he told me over the telephone not to worry about it.

Q. At that time you had talked to him, had you, and notified him personally?

A. Yes. I told him I wouldn't have one and he said not to worry about it.

Q. Were you ever given a booklet of rules pertaining to a doctor's certificate? A. No.

Q. Did you ever see any rules that required you to bring in a doctor's certificate, if you were ill for a day? [618] A. No.

* * *

Cross-Examination

By Mr. Ernst:

Q. Mr. Guerrero, on the day about January 14th or so, if you were sick and didn't come to work and called Mr. Bash and told him about it, did you get paid for that day?

A. Yes, I did, I think. I am pretty sure I did.

Q. Now, I gather that on the night of January 21st, when you had your friend call, the supervisor, that you weren't able to talk yourself?

(Testimony of Paul Guerrero.)

A. I was able to talk all right.

Q. Why didn't you call yourself in?

A. Why didn't I call? I don't know. I guess it was more convenient for my friend to call, I guess.

Q. But you stood by the telephone and told your friend what to say and heard the reply?

A. I was in bed, yes.

Q. What? A. I was in bed.

Q. But you——

A. I didn't want to have to get up from bed and go to the phone.

Q. Where is your telephone in your house?

A. Well, it is in the room. [619]

Q. It is in the same room that your bed is in?

A. That is right.

Q. And how far way from your bed?

A. About a yard, I guess, a couple of yards, getting up.

Mr. Ernest: Now, I would like the record to show that there is a good pause in between my question and my answer with respect to why he had his friend call.

Mr. Berke: What is the purpose?

Mr. Brotsky: The record hasn't shown the numerous pauses made by other witnesses or by yourself in between questions, Mr. Ernst.

Mr. Berke: Especially the prolonged pauses by counsel.

Trial Examiner Ruckel: Counsel is not testifying. The record may show a pause. However, the witness paused between various questions on direct.

(Testimony of Paul Guerrero.)

Mr. Berke: I think the Trial Examiner is the judge of the witness' demeanor.

Mr. Ernst: I would like the Examiner to note that there was a longer pause than usual. [620]

* * *

LEO BASH

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [628]

Direct Examination

By Mr. Ernst:

Q. State your name, please. A. Leo Bash.

Q. And your address?

A. 65 Elm Avenue, Mill Valley, California.

Q. What is your position at this time?

A. Presently a supervisor.

Q. For whom do you work as a supervisor?

A. Globe Wireless, Ltd.

Q. What are your hours?

A. Mid to 8:00 a.m.

Q. How long have you been in your present position? A. About three weeks.

Q. And what was your position prior to that time? A. Chief Operator.

Q. And when did you become formally appointed as a Chief Operator at Globe Wireless?

A. The latter part of September, 1947, I believe. [629]

* * *

(Testimony of Leo Bash.)

Q. During the time of your employment in the industry have you ever been a member of a Union?

A. Yes.

Q. What unions have you belonged to during that time?

A. I have been a member of the ARTA, which later became the ACA, and I have been a member of the IBEW, Local 6.

Q. Now, during what period of time were you a member of the IBEW? A. During the war.

Q. And what was the nature of your employment at that time?

A. I was a leaderman in the shipyard.

Q. What kind of a leaderman?

A. Electrical, maintenance.

Q. Was that radio communications work?

A. No.

Q. When did you join the union that you said was the predecessor [630] of the ACA?

Mr. Berke: How is that material, Mr. Trial Examiner?

Trial Examiner Ruckel: You may answer. Move along.

A. As nearly as I can recall, it was 1932 or 1933, somewhere along in there.

Q. (By Mr. Ernst): And were you involved in the—I withdraw that.

While you were employed and a member of the ACA—withdraw that also.

Were you involved in a strike in the thirties?

A. Yes.

(Testimony of Leo Bash.)

Mr. Berke: Just a moment. I move the answer be stricken.

Trial Examiner Ruckel: Objection sustained.

* * *

Q. (By Mr. Ernst): Now, Mr. Bash, were you a member of the ACA while you were an employee at Globe? A. Oh, yes, all the time.

Q. The whole time up to when?

A. Up to the time I was appointed Chief Operator.

Q. Now what did you do with respect to your membership in [632] ACA at that time?

A. I took a withdrawal card from the union.

Q. Now, what was your position prior to becoming Chief Operator?

A. Point to point operator, and then supervisor.

Q. And while you were supervisor were you a member of the ACA? A. Yes, sir.

Q. And were you at that time required to be a member of the ACA by virtue of the union agreement? A. Yes, sir.

Mr. Brotsky: I didn't hear that answer.

The Witness: Yes.

Trial Examiner Ruckel: Keep your voice up, Mr. Bash. The stenographer doesn't get the nod of your head, just your answer she gets.

Q. (By Mr. Ernst): And were the other supervisors that worked with you at that time required to be members of the ACA?

Mr. Berke: Just a moment. I object to that, it is incompetent, irrelevant and immaterial.

(Testimony of Leo Bash.)

Trial Examiner Ruckel: Objection sustained.

Mr. Ernst: I offer to prove that the supervisors employed by Globe Wireless up to the position of Chief Operator were required by virtue of the ACA-Globe collective bargaining agreement to maintain membership in the ACA in good standing as a condition of employment in accordance with the usual closed shop [633] provision up to August 15, 1948.

Q. (By Mr. Ernst): Now, Mr. Bash, were you yourself present at the general run of grievance committee meetings as a representative of the Company in the course of the handling of grievances under the ACA agreement?

* * *

The Witness: I would have to say "No."

Q. (By Mr. Ernst): Now, Mr. Bash, do you recall the period from about January 20, 1949, until January 24, 1949?

A. Vaguely, but "Yes."

Q. Just vaguely?

A. Well, some things are very clear.

Q. Now, I would like you to start out by telling me what hours [634] you worked during the period beginning with January 20, if you can recall that?

Mr. Berke: Of what year?

Mr. Ernst: 1949.

A. I arrived at the office around 8:40 in the morning, and I would leave the office around 5:15 or 5:30 or a quarter to 6:00 in the evening.

Q. (By Mr. Ernst): Was that your normal

(Testimony of Leo Bash.)

working hours during the period at the beginning of January?

A. That was my normal routine, yes.

Q. Now, during the period up to January 24th did you deviate from those hours in any substantial way?

A. Yes, very much so.

Q. Now, January 20th, is, I believe, a Thursday. Do you recall Thursday of January the 20th?

A. Yes, mainly because it preceded Friday, January 21.

Q. Would you tell me what hours you worked on Friday, January 21st?

A. Yes. I worked from 8:40 in the morning until around noon the next day.

Q. In other words, from about 8:40 on Friday the 21st until about noon on Saturday, the 22nd?

A. That is correct, yes.

Q. Now, what did you do after noon on Saturday?

A. I had my wife and son come over to the city and get me, and [635] I went home and went to bed.

Q. And when did you come back to work?

A. Sunday around noon.

Q. And how long did you continue at work after Sunday around noon?

A. Until Monday around noon, or shortly thereafter. [636]

* * *

Q. (By Mr. Ernst): Now, did you have a subsequent discussion with any of the employees shortly after 4 o'clock that afternoon?

A. Yes, sir.

(Testimony of Leo Bash.)

Q. At 4 o'clock you were on duty as usual, were you? A. Yes, sir.

Q. And did the regular shift come in in the usual fashion? A. Yes, sir.

Q. And did they replace the other group that had been working from 4:00, from 8:00 to 4:00?

A. Yes, they took their positions and made their reliefs. [657]

Q. Now, when a person comes in to make a relief and start his work does he normally get instructions from somebody as to what he has to do?

A. No, not unless there is some change made, they just all naturally go to the position that they have been used to working, or have worked. If there is some question about it they ask the Supervisor, but they all know what to do.

Q. Now, at any time after 4:00 o'clock did some people who were not on the shift come into the operating room? A. Yes.

Q. Who were they?

A. Malcolm Parks and Charles Jones came into the operating room.

Q. Do you recall at what time they came in?

A. I would say it was approximately 4:10, 4:15, somewhere along there.

Q. At that time where were you?

A. I was sitting at my desk in front of the, and slightly to the side, and in front of the control panel.

Q. And did you notice Parks and Jones come in through the door? A. I did.

(Testimony of Leo Bash.)

Q. Would you state what they did between the time they come in through the door and the time, if you did, you started to talk to them?

A. Yes. While I was walking over to where Parks and Jones [658] were, Parks stopped at the corner of the cloak room and kind of leaned up against the door, and gave the people that were on duty then a kind of——

* * *

Q. (By Mr. Ernst): Go ahead and tell what he did, don't characterize it, tell exactly what he did.

A. Well, he stopped and leaned against the corner of the cloak room there by the teletype department, and while he was still there I walked up.

Q. Now, you met Parks and Jones by the cloak room? A. That is right.

Q. At the time you arrived to where Parks and Jones were were there any other people there?

A. Not right at that moment, no.

Q. Did any people subsequently come and join you? A. Yes, sir.

Q. How soon after the time that you and Jones and Parks came together in front of the cloak room did the others come? A. Immediately.

Q. Now I would like to have you relate the beginning of that [659] conversation, telling me who said what, and quoting to the very best of your recollection each person's statements.

A. Well, as near as I can recall the exact words, I asked Malcolm if there was anything I could do

(Testimony of Leo Bash.)

for him, and he says, "Leo, we are going to put Chuck back to work."

Q. Go ahead and tell me what was next said.

Trial Examiner Ruckel: Did he request an explanation for the discharge?

The Witness: Pardon?

Trial Examiner Ruckel: Did he request an explanation for the discharge of Jones?

The Witness: No, sir. He merely said, "We are going to put Chuck back to work."

And by that time the group gathered around me in a semicircle, and Bruce Risley took over as spokesman for the group and started needling me with——

* * *

The Witness: He said, "Leo, you can't get away with this," and he repeated that statement several times.

And I ordered these people, all of them to get back to their circuits and go to work. None of them did.

I recall one girl in particular, Viola Williams,—— [660]

* * *

The Witness: I answered her. She didn't want to go back to work. She said, "I will go to work when Chuck goes to work." And essentially that was the answer of them all, they would not go to work until Chuck went to work. And then Bruce, of course, said again, "You can't get away with this, Leo."

(Testimony of Leo Bash.)

And I informed Bruce and the group present that I had not discharged Charles Jones, I suspended him, and that I could not under the circumstances reinstate him, put him back to work. And Bruce Risley said, "Well, who did?" And I says, "Well, General Boatwright did."

Well, he says, "Tell General Boatwright we are here."

I said, "You tell him yourself."

I says, "If you want to go in and see General Boatwright go in and see him, if you want to phone him, phone him, but you are not going to shove me around."

Trial Examiner Ruckel: What was the basis for your statement that General Boatwright had discharged him?

The Witness: Well,—— [661]

Trial Examiner Ruckel: Did you merely assume that?

The Witness: I merely assumed that.

Trial Examiner Ruckel: McPherson actually had discharged him?

The Witness: That is right, Mr. McPherson actually had.

And when they wouldn't return to work I went over to the time clock and I very carefully looked at each person in that group, took their time card out of the rack, and stamped their card out one at a time, and went across the hall with them to Mr. McPherson, and I laid them down on his desk, and

(Testimony of Leo Bash.)

says, "These people have come in at 4:00 o'clock to relieve the shift, and now they refuse to work."

He says, "All right, you go back over there, do the best you can." He says, "I will send you anybody I can." And he says, "I will ring you in a little while, or as soon as I can and inform you further."

So I went back over there and helped out in the teletype department and awaited this expected phone call from Mr. McPherson. And when it came it was, of course, him. He said——

Mr. Ernst: Wait a minute.

Q. (By Mr. Ernst): I would like to try to get, if I can, the time of this phone call from Mr. McPherson. Do you have a recollection as to the time?

A. Well, it must have been somewhere around 5:00, or a quarter after. [662]

Q. Now what had you been doing in the interim between the time you talked to Mr. McPherson when you had handed him the time cards and the time you got the telephone call from Mr. McPherson?

A. Well, I had been helping there on the teletype department, taking phone calls, answering tie lines, and so on and so forth.

Q. Did you do work in accepting messages for transmission? A. Yes, sir.

Q. And did you perform the work that you usually performed as Chief Operator?

A. No.

(Testimony of Leo Bash.)

Q. What sort of work were you performing?

A. I was doing the work that my teletype people should have been doing.

Q. Now, did you have conversations with this group that you had talked to before, or you had punched out the cards, during the interim between then and 5:15 when you got the phone call from Mr. McPherson?

A. I believe I walked up to Ted Byer, who was in that group, and asked him personally if he was in the group, or there merely as an observer, and he said, "No," he was not in the group at all, he was there merely as an observer. And then I believe I asked Sylvia Pottle if she was in that group too, and her reply was "Why, yes." And I think I said, "Well, I am amazed! [663] I thought you knew me better than that," or something like that.

Q. Did you notice what the group of people were doing during the interim when you were in the teletype department and doing other things around the office?

A. Just standing there.

Q. Now, do you recall about how long you talked to these people between the time Parks and Jones came into the room and the time you punched out the people?

A. Ten or fifteen minutes, I would say.

Q. Do you know what time you punched them out?

A. No, not exactly, but if the point is important it will certainly show on their time cards.

(Testimony of Leo Bash.)

Q. Now, you said, I think, it was 5:00 or 5:15 you got a telephone call from Mr. McPherson?

A. That is right.

Q. Would you state your conversation with him on the telephone at that time?

A. Yes. He said, "Leo,——"

* * *

The Witness: He said, "Leo, do this——" No, he says, "Come over and I will give you the time cards." [664]

Q. (By Mr. Ernst): Is that the total of the conversation?

A. No, no. I am trying to think and get it straight.

Trial Examiner Ruckel: Well, is it important from the——

The Witness: Well, anyhow he said, "Do this: Ask each one of those persons individually if they would now care to go to work, and if they do so tell them that they can go to work, and those that refuse to do inform them that they are fired." And that is what I did.

* * *

Trial Examiner Ruckel: Had you made any attempt to offer the cards to the employees when you punched them out and before you took them into Mr. McPherson's office and laid them on his desk?

The Witness: No, I didn't, and the card itself is not particularly important.

Trial Examiner Ruckel: I don't mean that. Did

(Testimony of Leo Bash.)

you offer it to them, or show them to the employees?

The Witness: No, from the point the cards are not particularly important. They could have went to work if they had [665] wanted to.

Q. (By Mr. Ernst): Well, now, what did you say to the people in the group after you had these instructions from Mr. McPherson?

* * *

The Witness: I walked up to the group, and I said, "I have been instructed to ask you—" I believe Sylvia was first—"Sylvia, if you would care at this time to return to your job." And I believe that Bruce Risley, where he was standing, was possibly next, and everybody in the group, of course, excepting Charles Jones.

Q. (By Mr. Ernst): You have now told us what you said to Sylvia Pottle. Did she make any reply?

A. She said "No" or shook her head. [666]

Q. (By Mr. Ernst): What did you say to Bruce Risley? A. Essentially the same thing.

Q. Did you say essentially the same thing to each one of the group? A. That is correct.

Q. Now I would like to have your best recollection as to what each one of these people said in reply to your statement?

A. They each one either said they would go to work only when Chuck went to work or they shook their head.

Q. Now, when this exchange of conversation was concluded, what did you do or say?

(Testimony of Leo Bash.)

A. I told them, "I have been instructed to inform all of you that you are fired."

Q. Then what happened?

A. They went out.

* * *

Q. Now, in what way did you spend your time the rest of that [667] day?

A. Well, it was around a quarter after five or twenty after five or something then, and I went over to my desk and got my wife on the telephone and told her if she had supper on, to take it off, that I probably wouldn't be home for several hours, and then I began to wonder what I could do about getting some of those people out of there that were on overtime and tired, get them out of there to go home.

Q. What did you do, is what I want to know, Mr. Bash?

A. Well, I started calling people on the graveyard shift.

Q. You didn't do any more work then after five fifteen yourself of the type of work that the——

A. I might have jumped up and answered the phone or answered a buzzer that was buzzing when somebody couldn't get to it. I might have done that two or three times.

Q. In other words, you did substantially what your usual duties were from then on?

A. That is right.

Q. Now, you said that you then started to tele-

(Testimony of Leo Bash.)

phone the people who were on the graveyard shift. Do you recall who you telephoned?

A. Well, I made several attempts to get practically everybody on the graveyard. Some of them I finally contacted and others I failed to contact.

Q. Now, that evening did you remain at work until after [668] midnight? A. Yes.

Q. And at midnight would you tell me what happened?

A. Well, at midnight the graveyard shift, the usual graveyard crew, came in, punched their time clocks in, sat around a little bit, waiting for midnight, the stroke of midnight, and shortly there before they went around and relieved the people on the various jobs and went to work.

Q. Was this the usual procedure when the shift changed?

A. Yes, that is the usual procedure and that is all there was to it.

Q. What happened to your crew that was on at that time?

A. They stamped out and went home.

Q. Now, did you go home immediately at that time or did you remain at work?

A. I was preparing to go home.

Q. Did anybody come into the office then who wasn't on duty at that time?

A. Yes, Malcolm Parks and Al Hinde.

Q. What time did they come in?

A. Around a quarter after twelve, possibly 12:20. I didn't notice exactly.

(Testimony of Leo Bash.)

Q. And where were you at that time?

A. Sitting at my desk.

Q. What did you do when you saw them come in? [669]

A. Just waited there at my desk until they came up.

Q. And did they come up to your desk alone?

A. No. Everybody raised right up and came up.

Q. And who opened the conversation?

A. Mr. Parks.

Q. Will you state what Mr. Parks said?

A. He said, "Leo, we want Chuck reinstated."

Q. What did you say?

A. I again stated that I had not discharged Charles Jones, that I had suspended him and that is all that I had done, that is all that my authority allowed me to do, that I couldn't under any circumstances reinstate Charles Jones, even if I wanted to, and that I considered it very stupid to come down here and put the pressure on me under the circumstances when they should know that I certainly can't do anything about it.

Q. What was next said?

A. Well, he just gave a wave of his arm and he said, "Well, I guess we can't do anything about it."

Trial Examiner Ruckel: Who was this?

The Witness: Parks. He and Al Hinde just stood there behind me and the rest of the people just made themselves comfortable in the supervisor's seat and the other chairs that were around

(Testimony of Leo Bash.)

there. Then after three or four minutes, I said, "Well"— [670]

Q. (By Mr. Ernst): Wait a minute now. Did anyone say anything about whether they would work or would not work?

Trial Examiner Ruckel: They didn't work, you said?

The Witness: No, they didn't work. No, I don't recall Parks putting it in exactly those words. He said, "I guess we can't do anything about it."

Q. (By Mr. Ernst): What did you then do?

A. Well, that was a little more than I had bargained for, so after I could collect my senses a little bit, I remarked that there was one thing I could do, and I went out to the elevator and got the elevator man, who is a special policeman at that time of the day, and asked him to take out Malcolm Parks and Albert Hinde, who had no business in there at that hour, which he did. [671]

* * *

Q. Now, how long did the group of the employees who were there remain in the operating room?

A. Well, as close as I can recollect, it was about 1:30. At that time, Mr. McDowell—

Q. Wait a minute. I would like first to bring this up chronologically.

Now, what did these people do between the time Parks and Hinde left and 1:30; that is, the people who had reported to work at 12 o'clock?

(Testimony of Leo Bash.)

A. They just sat there. There was a little bit of talk among themselves. [673]

* * *

Q. (By Mr. Ernst): Now, Mr. Bash, do you recall that you had a telephone conversation with Sylvia Pottle during the few days after January 21st? A. Yes, that was Sunday evening.

Q. Do you recall what time it was?

A. Oh, around 8 or 9 o'clock, somewhere along in there.

Q. Where were you at the time you made it?

A. At the office.

Q. Do you recall now what you said and she said in that conversation?

A. Well, essentially, I couldn't quote it word for word.

Q. Now, at that time did you ask her to come back to work? A. No.

Mr. Berke: What was the answer?

(Answer read.)

The Witness: No.

Q. (By Mr. Ernst): Will you state as best you can what was said by you and what was said by Miss Pottle?

A. Well, we discussed the present situation pro and con.

Mr. Berke: Will you tell us what it is, please, the language that you used?

Mr. Ernst: I am willing to have it stricken out. [674]

(Testimony of Leo Bash.)

Q. (By Mr. Ernst): Will you start again and say what you said and what she said. Repeat what was said, even if it takes a couple of minutes to do it.

A. Well, I called Sylvia to tell her that I felt certain that she had gotten only the one version as to why this trouble came up and if she had taken the time or made the effort to talk to me or to Mr. McPherson or some person who represented the company, before she joined this group, that she probably would never have joined.

Mr. Brotsky: Are you relating what you stated to her?

The Witness: Yes. And at that time she wanted to know what it was about, and I read her a copy of the inter-office communication I had sent to Mr. McPherson, in which I informed Mr. McPherson that I had suspended Charles Jones.

Q. (By Mr. Ernst): You are talking about the one you referred to earlier in the testimony?

A. Yes, I read that off to her and the conversation went back and forth, and she said, "Well, I still think a union is a good thing," to which I agreed. But I also said that in this particular case, in the case of this particular union, that it would have been so easy to have obtained an agreement and recognition with the company, if the leaders of this union had simply complied with the signing of the non-communist affidavit clause in the Taft-Hartley law, whether or not they were communists, just

(Testimony of Leo Bash.)

for the sake of the membership [675] of the union, and that if they had done so, they would have had Labor Board recognition, the service of the Labor Board, and this trouble that we were now in could never have developed.

* * *

A. And then she said she liked all the people, she liked her job with Globe and I also informed her that I liked these people, most of them, and that I had nothing personal against any of them and that it was because they had not been fully informed of exactly what the truth of the matter was that they had walked into a situation whereby so many of them had lost their jobs, and that I regretted very much, and that the way I felt then, if I had this situation to do over again, that I would have handled the situation in some other manner, that I wouldn't have permitted these people to lose their jobs, if I had known that that was what was going to develop.

Q. Now, did you tell her that this whole trouble had to [676] come to a head?

A. Not that I recall.

Mr. Berke: What was the answer?

The Witness: Not that I recall.

Q. (By Mr. Ernst): Did Sylvia Pottle say to you, "I think they were starting out with Jones and then going down the line," and did you reply thereto, "You have the general idea"?

A. No, I didn't make any such reply.

Q. Did she make that statement?

(Testimony of Leo Bash.)

A. Not that I recall.

Q. Now, did you on that same evening talk to Mr. Wheeler? A. This was Sunday evening?

Q. Yes. A. Yes, I talked to Les Wheeler.

Q. Do you recall about when you talked to him?

A. It was sometime about the same time I had made the necessary contacts for having the graveyard shift covered, because that is when traffic started to get heavy at midnight, Sunday night, which is Monday morning in the Orient and therefore I called Sylvia first—no—it must have been before that that I called Les, because Les was due at midnight and I made the call to find out if he intended to come in.

Q. Now, Mr. Bash, you said that the traffic got heavy at midnight on Monday morning, 12:01 Monday morning? [677]

A. That is when it begins to get heavy. That is 8 a.m. in the Orient, the next day.

Q. Now, did you discuss with Mr. Wheeler the matter of his coming in to work?

A. Yes, I did.

Q. Did you tell him——

Mr. Brotsky: Just a moment. May we have the conversation?

Trial Examiner Ruckel: What did you say and what did he say? You opened the conversation?

The Witness: Yes, I opened the conversation. I said, "Les, you undoubtedly have heard what has taken place down here?" "Yes."

(Testimony of Leo Bash.)

Q. (By Mr. Ernst): Wait a minute. Would you make it clear as to who said what in your conversation, wherever it isn't clear?

A. Well, I asked him, I said, "Les, you undoubtedly have heard what has taken place down here?"

And he said, "Yes."

Q. Then what did you say?

A. And I says, "Well, under the circumstances, Les, there was some question in my mind as to whether you were going to come in tonight to go on your regular graveyard shift or not. Now, I said, "I don't want to have you think that I am trying to put any pressure on you to make you come in, but if you [678] do want to come in, your job is here and I suggest, in view of the fact of which you are well aware, because you have made the same statements yourself previously, that because of your color you have two strikes on you, that you come down and protect your job."

And he said that he intended to come in at midnight. He would be there.

Q. Was there anything more in that telephone conversation? A. No, not that I recall.

Q. Now, did you have a conversation with Mr. Guerrero on Sunday? A. Yes, I did.

Q. At what time did you say you came to work on Sunday?

A. I come in around 12:30 or 1:00 p.m.

Q. And was Mr. Guerrero scheduled to be in at that time?

(Testimony of Leo Bash.)

A. He should have been in at 8 o'clock that morning.

Q. Was that one of his regular shifts?

A. Yes. [679]

* * *

Q. (By Mr. Ernst): Now would you relate the telephone conversation that you had with Mr. Guerrero shortly after you came to work on Sunday?

A. Well, when I came in, the acting supervisor informed me that Paul Guerrero had previously phoned in that he couldn't come to work, that he was sick, and therefore she had called and secured someone to cover him.

So I sat down to the phone and I called Paul Guerrero's number and I got hold of Paul on the phone.

Trial Examiner Ruckel: Did you talk to Paul, personally?

The Witness: I did, yes, and I said, "Paul, according to the watch list you were supposed to show up here at eight o'clock this morning."

"That is right."

And I said, "You say you are sick. What is the matter with you?"

He says, "I got a cold."

And I said, "You don't sound like you have got a cold to me." I says, "In view of what has developed down here at the office," I says, "I want you to do this, Paul: I want you to come down here now, right now, immediately, and report for work."

(Testimony of Leo Bash.)

If you are sick, you will be excused immediately and your job will be fully protected."

I says, "If you don't come down now, get a doctor's certificate to cover yourself, because I don't believe you [681] are sick."

And that was it. [682]

* * *

Q. Now, on that Sunday did you talk to Lillie Friend on the telephone?

A. Yes, I believe I talked to Lillie Friend that Sunday evening.

* * *

Trial Examiner Ruckel: What watch was she on, Lillie Friend?

The Witness: Lillie Friend was on No. 11, which is an 8 to 4 watch, Monday, Tuesday, Wednesday, Thursday and Friday, [684] with Saturday and Sunday off.

Trial Examiner Ruckel: That is, 8:00 p.m.?

The Witness: 8:00 a.m. to 4:00 p.m. [685]

* * *

The Witness: I called Lillie, she answered the phone, and I asked her if she knew, or was aware of what had taken place at Globe Wireless since she left Friday afternoon, and I don't remember exactly what her reply was, but I believe it was of the nature that she didn't know too much about it, and that she was at the present taking care of a very sick baby. And, anyhow, I went ahead as best I could and explained to her that the 4:00 to mid shift and the graveyard shift likewise had pulled a sit-

(Testimony of Leo Bash.)

down strike and got themselves discharged for it, and that I hoped that she was not involved, or wouldn't let herself be involved. I believe I also mentioned the fact that I had noticed a remarkable improvement in her work in the last few months, and that her work was entirely satisfactory, and that, "For Heaven's sake, come on down in the morning and protect your job." And she said, "Oh, yes, Leo, I will be there."

Q. Did she come in the next morning?

A. Yes, she did.

Q. At what time?

A. Around 8:00 or thereabouts.

Q. Did she come in, in other words, at the usual time?

A. Yes, I would say that she did.

Q. Did you meet her outside of the operating room or in the [686] operating room or——

A. Yes, I met she, Paul Guerrero and Les Wheeler standing just inside the cloak room, I would say four or five feet in to the cloak room.

Q. Now, at that time had Guerrero and Wheeler and Mrs. Friend hung up their hats and coats?

A. No.

Q. Did you see them come into the operating room from outside and go into the, or did you see them come into the operating room?

A. No, I didn't see them come in.

Q. Did you see them in the cloak room?

A. Yes, I saw them in the cloak room. I don't remember whether someone told me they were there, or how it was, but that is where I saw them.

(Testimony of Leo Bash.)

Q. And did you then go over to the cloak room to see them? A. I did, yes.

Q. At that time did you talk to all three of them as a group, or to them individually?

A. I talked to each one individually, I know, and I may have made some statements to them as a group. I don't remember.

Q. But all three of them were there present during the entire conversation that you had with them?

A. That is right.

Q. Did they leave as a group? [687]

A. I didn't see them leave.

Q. Now, would you state how the conversation opened?

A. Well, I don't know exactly, but I believe in turn—I don't know just exactly what turn it was, I spoke to Paul Guerrero first, I said, "Paul, have you got that doctor's certificate I told you to bring?" He said, "Oh, that is easy to get." I said, "You are fired."

I turned to Les Wheeler, I says, "You are supposed to be in at midnight. Why are you coming in at 8:00 o'clock in the morning?"

He said—I don't know exactly what he did say. I says, "You are fired."

Then I turned to Lillie Friend, I says, "Lillie, your job is in there, take off your coat and your wraps and go to work." And I says to Les Wheeler and Paul Guerrero, "I know you are going to make me reinstate Chuck Jones, now get down there on

(Testimony of Leo Bash.)

the bricks with the rest of them and make me do it." And I walked away.

Q. Now, did Lillie Friend talk to you at all at this time?

A. Well, if she did I don't remember what it was. I believe she did say she didn't know something about what is was all—— [688]

* * *

Q. (By Mr. Ernst): Did you tell Lillie Friend that she was fired? A. No, I did not. [689]

* * *

Q. Now, I would like to have you carefully consider what happened on the afternoon of January 21st, and particularly what happened after you told the group that they were fired and what you did from there on until, well, for a considerable period of time thereafter?

* * *

Q. (By Mr. Ernst): Mr. Bash, that afternoon did you have a conversation with Sylvia Pottle in the cloak room, in the operating [693] room at Globe Wireless after you had told everybody that they were fired?

A. No, I don't recall any such conversation.

Mr. Ernst: That is all.

Trial Examiner Ruckel: Cross-examine.

(Testimony of Leo Bash.)

Cross-Examination

By Mr. Berke:

Q. You say you don't recall having any conversation with Sylvia Pottle in the cloak room?

A. That is correct.

Trial Examiner Ruckel: That you did not?

The Witness: I do not recall that.

Trial Examiner Ruckel: Oh!

Q. (By Mr. Berke): You no longer hold a position, the position, as I understand it, that you did hold in January of 1949? A. That is correct.

Q. Is the job that you hold now a lower classification than the one you held before?

A. That is correct.

Q. The job that you held in January, 1949, was that of Chief Operator, is that correct?

A. That is right.

Q. Did you have any Supervisors under you?

A. I did, yes, three.

Q. How many? A. Three. [694]

* * *

Q. (By Mr. Berke): Were you asked to resign some time after January, 1949, from your position?

A. I was.

Q. And you refused? A. I did.

Q. And as a result you were demoted to supervisor? A. No, I don't believe that.

Q. Well, in any event, you were demoted after that, is that correct?

A. By my own request. [695]

* * *

(Testimony of Leo Bash.)

Q. (By Mr. Berke): Now, in this conversation that you had with [698] Mr. Jones some time during the day of January 20th in the operating room with respect to "Communism" and "fink," and so forth——

Mr. Ernst: Well, I object to the characterization of the conversation. If he wants to talk about one of the particular times and describe——

Trial Examiner Ruckel: That identifies the conversation, both words were used. You may answer.

Q. (By Mr. Berke): Why did you call Mr. Jones a Commie and a fellow-traveler?

A. Well, for the reason that he had made the statement that he expected that I was going to pick his work to pieces from here on.

Q. And when you said "All you Commies and fellow-travelers" whom were you referring to?

A. All the Communists and fellow-travelers.

Q. All the ACA members, is that right?

Mr. Ernst: I object on the ground he has had an answer to his question.

Trial Examiner Ruckel: He may answer. This is cross-examination. He may answer.

Mr. Ernst: He is becoming argumentative now.

Mr. Berke: That is your view.

Trial Examiner Ruckel: Go ahead, go ahead.

A. The answer referred to all Communists and fellow-travelers [699] regardless of union affiliation or no union affiliation.

Q. (By Mr. Berke): But including ACA members?

(Testimony of Leo Bash.)

A. If there are any Communists there, yes. [700]

* * *

Trial Examiner Ruckel: The witness does hesitate, he has hesitated all through his conversation, but the witness doesn't appear to be evasive. His answers, when they come, seem to be on the point, at least. [708]

* * *

Q. (By Mr. Berke:) Why did you call Miss Pottle up on the telephone? [711]

* * *

The Witness: I called her to inform Sylvia why Charles had been suspended and later discharged, because she was the only one to my mind that raised any question on the subject at all.

Q. (By Mr. Berke): Why did you feel that it was necessary to call her rather than to talk to her, when she was there the day the event occurred?

* * *

A. Well, it is hardly possible to talk the reason with people who are on a sit-down strike, and I didn't attempt it.

Q. (By Mr. Berke): Were you endeavoring to win her away from the group? Was that your purpose? [712]

* * *

A. No, that was not my purpose.

Q. (By Mr. Berke): Why did you call Mrs. Friend on the telephone?

A. To find out if she was going to report for work at eight o'clock the next morning.

(Testimony of Leo Bash.)

Q. Why were you concerned as to whether she was going to report to work?

Mr. Ernst: I object on the grounds that it is argumentative and ridiculous.

Trial Examiner Ruckel: He may answer.

A. We were shorthanded. [713]

* * *

Q. What was your purpose in calling Les Wheeler?

A. To find out if he was going to come to work at midnight. [714]

* * *

Q. (By Mr. Berke): The question was, when Parks came in with Hinde at midnight, January 21st, going into January 22nd, whether he asked for reinstatement of Jones as well as the 4 to midnight shift?

A. No, he did not.

Q. What did he ask?

A. He asked for reinstatement for Jones. [716]

* * *

Q. Do you remember in the course of your telephone conversation with him, telling him that you didn't believe he [718] was sick and that you wouldn't stand for any tricks?

A. I believe I said that, something similar to that.

Q. Do you remember saying that you wouldn't stand for any Barlow's tricks?

A. Yes, I believe I said something like that.

Q. You were under the impression then, were

(Testimony of Leo Bash.)

you, that he had joined the group and that is why he was staying away that day? A. Yes.

Mr. Ernst: I object.

Mr. Berke: He answered the question. I want the record to show.

Mr. Ernst: I object to the question and if you don't let me get my statements in, I am going to have to start objecting before you finish your question, and I don't want to do that, Mr. Examiner.

Trial Examiner Ruckel: Objection sustained.

* * *

Q. (By Mr. Berke): Now, when you called Mrs. Friend why on that occasion did you tell her during the course of your conversation that her work had remarkably improved? I want to know why it was on that occasion that you made reference to [720] that?

* * *

The Witness: And so I spoke to Lillie Friend about it, and she asked that a witness be present, and the witness was Malcolm Parks. At that time I showed her, asked her if she didn't—now that she knew about this if she wouldn't care to correct this and she said, "Yes," she would, and why hadn't I mentioned it before, that she had no idea that her work was not satisfactory. And I told her that under the circumstances, unless I could prove my statement, I had better keep my mouth shut, or words to that effect, because the ACA would jump right down my throat unless I could prove it. In

(Testimony of Leo Bash.)

this case I had her own brothers and sisters as witnesses, that she was soldiering on the job. Now, then, the reason why I told her that on that occasion was that I wanted her to know that her work was now satisfactory, and if she wanted to come back she had nothing to fear from me [721] as far as her work was concerned. [722]

* * *

Q. Did you know whether or not each employee was an ACA member? A. No, I did not.

Q. Which ones did you not know?

A. Well, I didn't know about Paul Guerrero, I didn't know about Madeline Bruce, I didn't know about Tessie Lorenzo, I didn't know about Lorraine Conger, I didn't know about Violet Leach, I didn't know about Ted Byer. I think that about answers the question. As a matter of fact, I can probably clarify the question. When I found out who were ACA members I was strictly and completely [728] amazed.

* * *

Q. Now, using that list, if necessary, will you state whether the following persons were present during the incidents which [730] led to your timing them out on the afternoon of January 21st, Rudy Niemi, did you time his card out?

Mr. Ernst: I object to doing it on this basis. I think he should do it on the basis of who was there.

Trial Examiner Ruckel: He may answer it any way.

(Testimony of Leo Bash.)

Q. (By Mr. Brotsky): Did you time his card out on the clock, Rudy Niemi? A. Yes, sir.

Q. Viola Williams? A. Yes.

Q. Bruce Risley? A. Yes.

Q. Malcolm Parks? A. Yes.

Q. Was he working that day? A. No.

Q. Did you time his card out anyway?

A. I believe I did.

Q. Sylvia Pottle? A. Yes.

Q. Pauline Smith? A. Yes.

Q. Al Hinde? A. Yes.

Q. And all the individuals I have named were in the group that [731] joined Mr. Parks and Mr. Jones around you and engaged in the discussion concerning the reinstatement of Jones; is that correct?

A. To the best of my knowledge they were, [732] yes.

* * *

Q. Now, let's get to something you do recall. Do you recall whom you had escorted out by the building guard? A. Yes.

Q. For being in the group that was with Malcolm Parks and Al Hinde to protest Chuck Jones' reinstatement?

Mr. Ernst: I object to the "for." He says he knows who the people were that were in the group. Let's go on and find out who they were. I don't think we need to characterize it any further.

Trial Examiner Ruckel: Who are they?

Mr. Brotsky: I think it will be quicker—

(Testimony of Leo Bash.)

Q. (By Mr. Brotsky): Was Lorraine Conger in that group?

Mr. Ernst: It might be quicker if he reads the names off.

Trial Examiner Ruckel: Let counsel do it his own way, Mr. Ernst. Go ahead.

Q. (By Mr. Brotsky): Was John Gyuresik in that group? A. Yes.

Q. Was Virginia Kelso in that group?

A. Yes.

Q. Was Jesse McLin in that group? [733]

A. Yes.

Q. Was Homer Mulligan in that group?

A. Yes.

Q. Was Louis Pena in that group?

A. Yes.

Q. As a matter of fact, you asked Louis Pena, did you not, "Are you in this group?"

A. Yes, I did.

Q. Was Violet Leach in that group?

A. Yes.

Q. Was David Sheaffer in that group?

A. Yes.

Q. Was George Rosengren in that group?

A. Yes. [734]

* * *

Q. I see. Now, from the time that you called Lillie Friend on Sunday until she came in Monday morning did you remove her card from the rack?

A. No, I did not. [735]

* * *

(Testimony of Leo Bash.)

Trial Examiner Ruckel: The witness has already testified he was prepared to hire her when she came in. [736]

* * *

Q. Now, when you called Les Wheeler to find out if he was coming in at midnight had you been informed by any company official concerning a policy toward a worker who said he would not be in his regularly scheduled shift?

A. No, I had not.

Q. You had not? A. No.

Q. Were you instructed by any company official to call these various people that you called?

A. No, I was not. [737]

* * *

Q. When you arrived at the office of the company Monday morning at that time had there been a picket line or lockout line established that you had seen in front of the Company's offices?

A. Monday morning?

Q. Yes.

A. No, as a matter of fact, I had been there all night, and I didn't go down until around noon, or some time around there, [739] and I didn't notice what time they established a picket line.

Q. I see. Well, what time did you speak to Paul Guerrero, Les Wheeler and Mrs. Friend that morning? It was before you had gone down at all, wasn't it?

A. That is right.

Q. Then when you stated "If you want Jones

(Testimony of Leo Bash.)

reinstated you can go down on the bricks and join the rest of the group'' you didn't know at the time that there had been a picket line?

Mr. Ernst: I object on the ground that it is argumentative.

Trial Examiner Ruckel: Oh, he may answer.

A. I did know because the 8:00 to 4:00 shift come up right through it, and they told me about it. [740]

* * *

Q. Now, is there anything in the time of day that affects the volume of traffic on circuits?

A. Yes.

Trial Examiner Ruckel: Does the record show that, Mr. Ernst?

Mr. Ernst: I am not sure. The one thing I wanted to cover was with respect to the mid to 8 a.m. period, and I wanted to pick up also certain things that were raised on [743] direct, Mr. Examiner—I mean on cross—on this particular point.

The Witness: Well, it seems to be or is a practice of business houses to file their telegrams just before the close of the business day, and in the case of San Francisco here, that would generally begin around 4:30 and continue on until 6 or 6:30 p.m. in the evening. That is when the file is the heaviest. That, of course, corresponds to 8 o'clock in the morning the next day in the Orient, and those business houses over there want those telegrams as soon after 8 o'clock as they possibly can get them, and when they are unduly delayed, they complain.

On the other hand, midnight here is 4 p.m. in the Orient and at 4 p.m. or midnight here traffic begins

(Testimony of Leo Bash.)

to get heavy in the Orient, because it is like here, the business houses are closing for the day and as is an established custom with business houses, they file their business, their traffic, as one of the last things they do before closing. Consequently, at around 2 or 3 or 4 o'clock in the morning is the busiest time for traffic flowing from West to East. [744]

* * *

Q. Now, is your pay as a supervisor at the present time based upon any published schedule of rates of pay?

A. Yes. It is based on the expired ACA Globe agreement.

Q. In this agreement that is Respondent's, marked Respondent's Exhibit 11?

A. Yes. [746]

* * *

Q. And the other employees in the operating room were paid in accordance with the same schedules?

Mr. Berke: I object to that as irrelevant and immaterial.

Trial Examiner Ruckel: Objection sustained as to the other employees. [747]

* * *

Mr. Berke: Before we proceed, Mr. Examiner, I at this time move that we exclude from the hearing room all witnesses of the Respondent except those who are company officials.

(Testimony of Leo Bash.)

Mr. Ernst: I thank you for your fair treatment of me.

Mr. Berke: That is an unfair statement, because the Trial Examiner granted your motion with respect to those who were witnesses, if you will recall, and not charging parties. [753]

* * *

JAMES H. JONES

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. Will you state your name, please.

A. James H. Jones.

Q. And your address?

A. 76 Middlefield Drive, San Francisco.

Q. What is your work?

A. I am Commercial Manager of Globe Wireless. [754]

* * *

Q. Do you recall the afternoon of January 21, 1949? A. Definitely.

Q. And at around 5:15 of that afternoon were you in the office where Mr. McPherson's desk is and Mr. Neil Brown's desk is?

A. I was in Room 652. My desk isn't located in that section of the office. Mine is located right by the entrance coming into 652 about 12 feet,

(Testimony of James H. Jones.)

maybe 15 feet, from the telephone operator, 10 feet, 8 feet, 6 feet, maybe.

Q. That is, you were very close to the telephone operator? A. Yes.

Q. My recollection of that room is that there is a small railing around a space maybe 10 feet square opposite the door and next to that space is the telephone operator; is that recollection correct?

A. That is on your left as you go in, that is right. [755]

* * *

Q. And did Mr. McPherson come down to talk to the people who were in this space near the telephone operator's place of work?

A. Mr. McPherson was there when—I was in the operating room at 5:15, when they came out of the operating room and went in there. When I went in about five or six minutes later, Mr. McPherson was standing there talking to the group of people.

Q. I see. And did you overhear this conversation?

A. I overheard, I would say, the majority of it, yes.

Q. Now, do you recall some woman who was talking very loudly to Mr. McPherson?

Mr. Berke: Just a moment, that is an improper question and I object to counsel characterizing the tone. Let the witness tell, if he can. Ask him the proper question.

(Testimony of James H. Jones.)

Trial Examiner Ruckel: Can you identify the person?

Q. (By Mr. Ernst): Do you know the name of the person that I referred to so improperly?

A. I don't know the name. The name has been mentioned to me. I heard someone talking to me about the name the other day, but there was a woman who came in a few minutes, five or ten [756] minutes. I don't recall how long it was. She appeared to be hysterical and——

Mr. Berke: Just a moment. I object to what she appeared to the witness.

The Witness: Well, I don't know what else you would call it.

Trial Examiner Ruckel: Objection sustained.

The Witness: If you heard someone scream with tears in her eyes——

Mr. Berke: Describe what you saw and heard.

Mr. Ernst: Will you instruct General Counsel not to talk to the witness.

Trial Examiner Ruckel: If she was talking in a loud voice, you may say so.

The Witness: She was.

Trial Examiner Ruckel: Was she screaming?

The Witness: To me, she was screaming. I would call it screaming.

Q. (By Mr. Ernst): Do you recall what she was talking about?

A. The rapidity of her conversation was so fast, and to me, so incoherent, I couldn't tell what she was talking about.

(Testimony of James H. Jones.)

Q. What do you recall about her statements now?

A. Well, she was trying to condemn certain people in the organization, this and that and the other——

Mr. Berke: Just a moment. I object to that unless he tells [757] the words used.

Trial Examiner Ruckel: Tell what she said, so far as you could make out.

Q. (By Mr. Ernst): Who was the person she was referring to? A. Mr. Leo Bash. [758]

* * *

Q. (By Mr. Ernst): Now, Mr. Jones, do you recall that Mr. McPherson was talking to or attempting to reply to this woman's statements?

A. To the best of my recollection, this lady was talking so fast and so loud, he didn't——

Mr. Berke: I object to that as not being responsive.

Trial Examiner Ruckel: Let him finish.

Q. (By Mr. Ernst): Don't be disturbed by those comments. Go right ahead and tell your story as you understand it and recall it.

Trial Examiner Ruckel: Is your answer that you don't recall or you didn't understand? [759]

The Witness: Well, I am trying to tell you, because the lady was, to me, she was——

Mr. Berke: The question was, what did McPherson say?

Trial Examiner Ruckel: What did he say to her, McPherson?

(Testimony of James H. Jones.)

The Witness: That is what I am trying to tell you, that he tried to talk to her but with all of her hollering and screaming——

Trial Examiner Ruckel: All right, he didn't succeed?

The Witness: Her voice drowned him out.

Trial Examiner Ruckel: Then you didn't hear what he had to say?

The Witness: Not at that moment, no.

Q. (By Mr. Ernst): Did you hear anything that Mr. McPherson had to say?

A. I did, after she had had her say-so over.

Trial Examiner Ruckel: Then what was it that Mr. McPherson said?

The Witness: He told this lady, as I recall it now, he told her—nothing can be verbatim, as far as I am concerned.

Trial Examiner Ruckel: The point is, what did he say?

Q. (By Mr. Ernst): Give us your best recollection.

A. The dismissal of Mr. Jones had nothing to do with her or any of these other employees, and that the circuits were waiting to be manned and these employees and she could man the circuits of the company. [760]

Q. Do you recall anything else?

A. Well, something came up—I can't recall that—that made a deep impression upon me, because I couldn't understand why they wouldn't——

Mr. Berke: Just a moment, I object.

(Testimony of James H. Jones.)

Q. (By Mr Ernst): I just want to hear if you——

A. He repeated again to them that they could go back to work and man the circuits.

* * *

MAE MILLER

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. Will you tell me your name, please? [761]

A. Mae Miller.

Q. And what is your address?

A. 1345 Taylor Street.

Q. San Francisco? A. San Francisco.

Q. And will you tell me what your work is now?

A. Administrative bookkeeper.

Q. And by whom are you employed?

A. Mr. Jenkins, William P. Jenkins.

Mr. Berke: Will you please speak louder. I can't hear that.

Q. (By Mr. Ernst): Will you please speak up. And where do you work?

A. In the Accounting Department.

Q. Of what Company?

A. Globe Wireless, Ltd.

Q. And in the San Francisco office?

A. San Francisco office.

(Testimony of Mae Miller.)

Q. Now, what is the room number of the room in which you work? A. 652.

Q. And is that the room in which the telephone operator sits? A. The switchboard operator?

Q. Yes. [762] A. Yes.

* * *

Q. Now, do you recall the afternoon of January 21, Friday afternoon? A. Friday? Yes.

Q. And do you recall at 5:15 on that day, would you state, whether a group of employees from the operating room came into this entrance way by the switchboard operator?

Mr. Berke: Just a minute. I object to leading questions.

Trial Examiner Ruckel: What difference does it make in this case?

Mr. Berke: All right.

Trial Examiner Ruckel: Do you remember a group came in?

The Witness: Yes.

Q. (By Mr. Ernst): And did you overhear any of the conversation? [763]

A. Well, I heard part of it. I was on my way out and, well, it caused quite a bit of commotion, so I naturally was curious to see what was going on.

Q. And did you see Mr. McPherson there?

A. Yes.

Q. Did you hear Mr. McPherson talking to the people?

A. Yes, he was talking but he was talking very

(Testimony of Mae Miller.)

low. This one girl was talking very loud and I heard mostly what she was saying. I didn't hear too much of what McPherson was saying.

Q. Now, when this girl that was speaking so loudly finished, did Mr. McPherson say anything?

A. Well, yes. I can't tell you word for word what he said.

Q. I assume that you can't, as it is a long time ago, but will you state as best as you can now recall anything that you overheard Mr. McPherson saying to the people. Paraphrase it but try to say it as closely as you can now recall it what you heard him say.

A. Well, the impression I got was——

Mr. Berke: Just a moment.

Q. (By Mr. Ernst): Don't say your impression. Try to quote him as best you can.

Mr. Brotsky: If you can't recall, just state that.

Trial Examiner Ruckel: Do you recall some of his words?

The Witness: Well, the only thing I remember was that he was trying to talk them into going back to work. [764]

Trial Examiner Ruckel: What did he say, go back to work, or won't you go back to work, or will you go back to work, we would like to have you go back to work, what? I have given you four. What did he say?

A. Well, that they should go back to work, that this Jones case shouldn't affect their work. That is the impression I got.

LORRAINE E. CONGER

a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. You previously testified, Miss Conger, that you attended a union meeting on the evening of January 21st? A. That is right.

Q. And that you were at the meeting from about 8:00 until 9:30, or so, when you telephoned into the office at Globe?

A. I don't recall the time; I was late to the meeting.

Q. Well, anyway, you recall that you did testify that you telephoned in to tell them that you would be in? A. I do.

Q. Now, at that meeting there was a discussion, I believe, as to the discharge of Chuck Jones?

A. There was some talk of it. There was a lot of confusion.

Q. And was there not also a bit of talk about——

Mr. Brotsky: Just a moment. This is direct examination. He is leading the witness.

Mr. Ernst: I am. She is obviously an adverse witness. I am entitled under the Federal Rules to cross-examine her by leading questions.

Trial Examiner Ruckel: Keep it less leading. [781]

Mr. Ernst: I am entitled to do so.

Mr. Brotsky: This is your witness, you called

(Testimony of Lorraine E. Conger.)

her. If you want to cross-examine—you made an effort to, it was ruled irrelevant.

Trial Examiner Ruckel: Her hostility has not been demonstrated yet.

Mr. Ernst: She is an opposing party, it is ipso facto, it is a matter of law, an opposing witness.

Mr. Berke: You are bound by her answers to your questions if you call her as your witness. So far she has done all right.

Trial Examiner Ruckel: If she develops to be reluctant I will permit you to cross-examine.

Mr. Ernst: I object to this ruling on the grounds that I am entitled to examine her on that basis, and that the law requires the Examiner to permit me so to question this witness.

Trial Examiner Ruckel: That is not my understanding.

Mr. Ernst: Then I am being denied my rights under the law and his ruling.

* * *

Q. (By Mr. Ernst): Did you also discuss what procedure would be taken by the group at midnight or shortly thereafter?

A. There may have been such discussion. I don't remember.

Q. You don't remember any such discussion?

A. No.

Q. Do you remember a discussion of anything else at that meeting than what I have just referred to?

A. No.

(Testimony of Lorraine E. Conger.)

Mr. Berke: I object to that as being wholly irrelevant to the issues involved here. [783]

Trial Examiner Ruckel: You may answer.

Mr. Ernst: She already has answered.

Do you have her answer, Miss Reporter?

The Reporter: Yes.

Trial Examiner Ruckel: It may stand. Go ahead.

Q. (By Mr. Ernst): Now, at the meeting, in the course of this discussion of what happened at 4:15 to 5:30, do you recall that it was reported that Mr. Bash told the group that they were fired?

Mr. Berke: Just a moment. I object to that as being leading.

Trial Examiner Ruckel: She may answer.

Mr. Ernst: It is not leading in the first place.

Trial Examiner Ruckel: She may answer.

A. I remember hearing something about them being fired, yes.

Q. (By Mr. Ernst): Do you remember also that there was some discussion of the fact that they went to Mr. McPherson later on, and that he also advised them that they were fired or discharged?

A. I heard that also.

Q. And do you recall hearing that the group had gathered around Mr. Bash to "protest" the discharge of Mr. Jones? A. Yes, sir.

Q. And when you left the meeting at its close did you expect that you and the other workers on the mid to 8:00 a.m. shift [784] would do substan-

(Testimony of Lorraine E. Conger.)

tially what the ACA people had done at 4:15 to 5:30?

Mr. Berke: Just a moment. I object to that as incompetent, irrelevant and immaterial.

Trial Examiner Ruckel: Objection sustained.

* * *

Mr. Ernst: Mr. Risley, please.

BRUCE B. RISLEY

a witness called by and on behalf of the Respondent, having been previously duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. Would you state your name?

A. Bruce Risley, Marin City, California.

Q. Would you state your present occupation?

A. I am——

Mr. Berke: Wait a minute. How is that material, as to his present occupation?

Trial Examiner Ruckel: Well, why not?

Mr. Berke: That is what I am trying to find out, why is it, what is the relevancy?

Trial Examiner Ruckel: It is a normal question, to ask his address, his business, his name.

A. I am the Secretary of ACA, Local 9.

Q. (By Mr. Ernst): How long have you held that position?

A. A short time, a couple of months.

* * *

(Testimony of Bruce B. Risley.)

Q. (By Mr. Ernst): Now, Mr. Risley, when did you become employed at Globe Wireless, if at all?

A. December 10, 1947.

Q. How did you gain your employment with Globe Wireless?

A. I was assigned through the Union Hiring Hall.

Q. The ACA Union Hiring Hall?

A. Correct.

* * *

Q. (By Mr. Ernst): Did you fill out an employment application, or a history of your previous employment when you went to work at Globe?

Mr. Brotsky: Same objection. The Examiner has sustained it.

Trial Examiner Ruckel: He may answer. [788]

A. I did.

Q. (By Mr. Ernst): And at that time did you——

Trial Examiner Ruckel: If he was hired through the Union Hiring Hall, why, he certainly must have been a member of the Union, and the company must have known it. That is the point.

Q. (By Mr. Ernst): And in that application did you not indicate that you were employed by the American Communications Association at a salary of \$70.00 a week as representative for the period from 1937 to 1947?

* * *

Trial Examiner Ruckel: The salary is not material. I sustain any objection as to the salary.

(Testimony of Bruce B. Risley.)

Mr. Ernst: I offer to prove that it was at that salary rate.

* * *

Q. (By Mr. Ernst): Mr. Risley, during the period of your employment at Globe Wireless did you obtain a furlough to accept a position with the Union in official capacity for the period of the furlough, to be for the duration of the Mackay strike?

Mr. Berke: Just a moment. I object to that, it is irrelevant and immaterial, it has no bearing on the issue in this hearing.

Trial Examiner Ruckel: Well, it has some bearing. He may answer.

A. I did. [790]

* * *

NEIL D. BROWN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. Will you state your name, please?

A. Neil D. Brown.

Q. And your address?

A. 20 Northview Court, San Francisco.

Q. By whom are you now employed?

A. Globe Wireless Company.

Q. What is your present position?

A. I am a Vice-President.

Q. Where is your office?

(Testimony of Neil D. Brown.)

A. It is in Room 652.

Trial Examiner Ruckel: Keep your voice up, Mr. Brown.

The Witness: Room 652 at 141 Battery Street.

Q. (By Mr. Ernst): San Francisco, California? A. Correct.

Q. Is this room, the number of which you have just given, across the hall from the operating room of the Globe Wireless in San Francisco? [791]

A. It is.

Q. In the course of carrying on your duties do you frequently go into the operating room?

A. I do from time to time.

Q. And do you know the employees in the operating room yourself.

A. I do, a lot of them.

Q. And do you from time to time talk to them about various things? A. I do.

Q. Do you advise the employees that your door was always open to them for them to come in and talk to you about any problems that they might have as to their employment? A. I do.

Mr. Brotsky: May we have the time and place, and to whom and what employee? Otherwise I will move that it be stricken.

Trial Examiner Ruckel: Well, it was always open, is that it, Mr. Brown?

The Witness: That is correct.

Q. (By Mr. Ernst): Now, Mr. Brown, who is your immediate supervisor?

(Testimony of Neil D. Brown.)

A. In the office?

Q. Yes. A. General Boatwright.

Q. And what is his position? [792]

A. He is senior Vice-President of the Company.

Q. Now, were you ill last winter?

A. I was.

Q. And for what period of time approximately?

A. From the end of December until some time in March.

* * *

Mr. Ernst: Mr. Examiner, at this time I would like to move that the case be continued so that I can have an opportunity to take the depositions of all of the charging parties who have not testified with respect to what actually happened, so that I can have that available, and can prepare to conclude my case.

Mr. Berke: Of course, there is objection to that, the most unorthodox procedure. If counsel wanted them he has not asked us to bring those people in.

Those he did ask we made [793] available. He was told at the beginning of this hearing that if he wanted people that were not going to be here that he could apply for subpoenas in the usual manner. He has not done either.

Mr. Ernst: I like to handle the case in the ordinary fashion, in which you know what witnesses say.

Trial Examiner Ruckel: Let's have no discussion about that. The motion is denied. [794]

* * *

JAMES A. McDOWELL

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. Will you state your name?

A. James A. McDowell.

Q. Will you talk up a little louder so that the people in the room can hear you, particularly the reporter in front of you? A. Yes, sir.

Q. What is your position?

A. Supervisor at Globe Wireless.

Q. And whereabouts, what city?

A. San Francisco, California.

Q. And do you supervise the APO's and the the teletypes and the group who are employed in the operating room at Globe Wireless?

A. I do.

Q. What shift, or what watch were you working on during the period of January, 1949?

A. 4:00 p.m. until midnight [796]

* * *

Cross-Examination

* * *

By Mr. Berke:

Q. You worked under Leo Bash, did you not?

A. Yes. [812]

Mr. Ernst: Object.

Trial Examiner Ruckel: He may answer.

The Witness: Yes, sir.

(Testimony of James A. McDowell.)

Q. (By Mr. Berke): And he directed your work, did he? A. Yes.

* * *

Q. (By Mr. Brotsky): Mr. McDowell, what circuits did you work on the afternoon of Friday, January 21st, actually operate? A. After 4 p.m.?

Q. Yes.

A. I suppose I must have worked all of them, at one time or another.

Q. Did you work Manila? A. Yes.

Q. Was there the usual amount of traffic going out to Manila? A. There was.

Q. And you were able to put that traffic out?

A. No. [813]

* * *

Recross-Examination

By Mr. Brotsky:

Q. Mr. McDowell, you were a member of ACA up to August 15, 1948, were you not?

A. Yes, sir.

Q. Are you still a member of ACA?

A. No.

Q. When did you withdraw or resign?

Mr. Ernst: I object. It is immaterial. Mr. Examiner.

Trial Examiner Ruckel: He may answer. I don't see the materiality now. [846]

A. I quit paying dues around that time.

Q. (By Mr. Brotsky): Right after August 15th? [847]

* * *

(Testimony of James A. McDowell.)

Redirect Examination

By Mr. Ernst:

Q. Mr. McDowell, were you one of the persons who was required to be a member of the ACA under the agreement that expired on August 15th, 1948?

A. I was. [848]

* * *

JAMES B. McPHERSON

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ernst:

Q. What is your name?

A. James B. McPherson.

Q. And what is your address?

A. 216 Magnolia Avenue, Millbrae, California.

Q. Where are you employed?

A. Globe Wireless, Ltd., 141 Battery Street, San Francisco.

Q. What is your position there?

A. District Manager.

Q. How long have you held that position?

A. Since December, 1946.

Q. How long have you been in the communications industry?

A. 25 years. [854]

* * *

Q. (By Mr. Ernst): During July of 1948 did you participate in some collective bargaining negotiations between the ACA and Globe Wireless?

(Testimony of James B. McPherson.)

A. I did.

Q. And during that time were you one of the representatives [856] of Globe Wireless?

A. I was.

Q. And was one of the issues up in that negotiation the matter of whether Globe would renew a contract for the period from August 15 on?

A. Yes.

Q. And do you recall that you were at a meeting on July 19, 1948, which is referred to in this document marked Respondent's 8 for identification?

A. I was present at that meeting.

Q. And does this document represent the company's report to the employees as to what happened at that meeting?

A. It does.

* * *

Q. (By Mr. Ernst): Mr. McPherson, during the course of these negotiations with the ACA did you attend a meeting in which the employees were apparently represented by ACA men, including some of the employees in the shop, and Mr. Barlow and Mr. Henry [857] Schmidt?

Mr. Berke: I object to that as irrelevant and immaterial, incompetent.

Trial Examiner Ruckel: What is the relevancy of it?

Mr. Ernst: I am just leading up to what was said there about the Communist affidavits.

Trial Examiner Ruckel: How does he know?

Mr. Berke: How material is that?

Trial Examiner Ruckel: I have already ruled that that question—

(Testimony of James B. McPherson.)

Mr. Ernst: Well, I offer to prove, and I will do it not asking a lot of questions, but in one general offer. Is that agreeable?

Trial Examiner Ruckel: That is all right.

Mr. Ernst: I will offer to prove that Mr. McPherson was at this meeting as a representative of Globe Wireless, that the ACA representatives included certain of the employees in the operating room, and Mr. Barlow and one Henry Schmidt, who was an officer of the International Longshoremen's and Warehousemen's Union, CIO, that the question of recognition came up, and the Company advised that it would recognize whoever was certified by the National Labor Relations Board, and the representatives of the Unions, Mr. Schmidt and Mr. Barlow said they would not sign the affidavits, and Mr. Schmidt said, "We do not intend to sign the affidavits now or at any time [858] hereafter."

Q. (By Mr. Ernst): Now, Mr. McPherson, do you recall seeing this document, which I am going to have marked Respondent's next in order?

(Thereupon the document above referred to was marked Respondent's Exhibit No. 15 for identification.)

Trial Examiner Ruckel: Do you want him to tell you what it is?

Mr. Ernst: Pardon me?

Trial Examiner Ruckel: Do you want him to tell you what it is?

Mr. Ernst: Oh, no. I want to ask him whether that was a notice posted on the bulletin board in the

(Testimony of James B. McPherson.)

operating room of Globe Wireless on or about October 21, 1948.

The Witness: It is.

Mr. Ernst: I offer it in evidence, Mr. Examiner.

Mr. Berke: Just a moment. Objected to as irrelevant, immaterial, incompetent, self-serving, no bearing on the issues involved herein. It goes to that portion of defense which was stricken from the record, and which the Trial Examiner heretofore ruled upon.

Mr. Ernst: Mr. Examiner, the notice says, among other things, "Effective immediately the Company will——"

Mr. Berke: Just a moment. I object to counsel reading it.

Mr. Ernst: I can certainly state my argument at this time, [859] and I am going to state it.

Mr. Berke: The Trial Examiner has it now, and he is reading it.

Mr. Ernst: Mr. Examiner, would you ask counsel for General Counsel not to interrupt my argument in the middle of a sentence?

Trial Examiner Ruckel: Well, I can read the instrument if I have the opportunity.

I have read it, I don't see its relevancy. What is its relevancy?

Mr. Ernst: Well, it says in the—1, 2, 3, 4th paragraph that "The Company will discharge, suspend or otherwise discipline any employee it has reason to believe is failing to perform his work properly."

(Testimony of James B. McPherson.)

Mr. Brotsky: Any company will do that.

Trial Examiner Ruckel: Isn't that the prerogative of any employer? I mean, is that something unusual in there?

Mr. Ernst: It further states that when the Globe ACA agreement terminated August 15 the Company adopted the policy, and advised employees that wages, hours and working conditions of the old contract would be maintained until a bargaining agent had been certified by the NLRB. Such a policy was—well, that is not important. And then he goes on to say that the “Sections of the agreement covering wages, sick benefits, vacations and automatic salary increases, based upon Company [860] seniority, shall continue to be recognized by the Company.”

Trial Examiner Ruckel: Yes.

Mr. Ernst: This is in effect an amendment of the old conditions of employment that were set out in the agreement, and this is notice of the conditions under which the employees were to work after that date.

Trial Examiner Ruckel: Well, it may go in for what it is worth.

(The document heretofore marked Respondent's Exhibit No. 15 for identification, was received in evidence.)

* * *

Q. * * * Now, does the telegram, General Counsel's 14, appear to be the telegram sent by you to Mr. Guerrero? A. It does.

(Testimony of James B. McPherson.)

Q. Now after that telegram was sent did Mr. Guerrero telephone you to arrange for a meeting with you to discuss his discharge, [861] and the matter of returning him to work?

Mr. Brotsky: Just a moment. I will submit that the purpose of the call will be shown by the conversation that took place, if there was any call.

Trial Examiner Ruckel: Doesn't the telegram show?

Mr. Ernst: Pardon me?

Trial Examiner Ruckel: Doesn't the telegram—skip it. He may answer.

A. There was no telephone call.

Q. (By Mr. Ernst): Now I want to call your attention to Respondent's Exhibit 14 and ask you to look at the original thereof, and state whether the word "later" was underlined in the copy, or in the original when it was received by you?

A. It was.

Q. Now, calling your attention to General Counsel's Exhibit 12 again, and particularly to the last numbered subparagraph at the end of it, under the heading which says, "This is to advise that:

"3. Whenever necessary, the Company will meet with any employee to discuss subjects relating to his wages, hours and working conditions," and to subdivision 1, which says, "The Company will not—" "not" being underlined—"recognize any shop steward, shop chairman, shop committee, nor any group purporting to represent employees in collective bar-

(Testimony of James B. McPherson.)

gaining unless such representatives are designated in accordance with the [862] National Labor Relations Act."

Now after that notice of November 6th was posted did you have any discussions with respect to your meeting with more than the individual employee?

A. I did.

Q. And can you state with whom you had the discussion?

A. As I recall, Mr. Risley and Mr. Parks.

Q. And about when did the discussion occur?

A. Probably during the latter part of the month of November, or December. I don't recall exactly.

Q. And at that time what request was made of you by either Mr. Risley or Mr. Parks?

A. It was requested that either Mr. Risley or Parks be permitted to accompany the individual who had the grievance.

Q. And what did you reply?

A. I replied that it was not in accordance with the memorandum over the signature of Mr. Brown, which specifically stated that grievances would be limited to the individual.

Q. Did Mr. Risley and Mr. Parks accept that as a final decision? A. They did not.

Q. What did they ask you to do, or what did you do?

A. They insisted that they had the right, at which time I——

Q. They had the right to what?

(Testimony of James B. McPherson.)

A. To have a representative, at which time I told them if [863] they would excuse me I would consult with our counselor.

Q. And did you do that? A. I did.

Q. And after you had consulted with your counsel what did you tell Mr. Risley and Mr. Parks?

A. I told them even though the memorandum of November the 6th specifically stated that individuals only should present grievances that there would be an exception to that memorandum, and that Mr. Risley or Mr. Parks would be permitted to have a representative. [864]

* * *

Q. Now, Mr. McPherson, about how many people work in the [869] operating room on the three shifts during the entire week, how many individuals are employed there in San Francisco?

Well, let me get it to the relevant point.

How many were employed there in January of 1949?

A. May I ask whether this is confined only to operators, or will it include all personnel within the operating room?

Q. Well, personnel in the operating room, operators, teletype operators, APO's, clerks?

A. In other words, those involved in the handling of hot traffic?

Q. That is right. A. About 29.

Q. And is Mr. Bash in the 29? Did you count him in among the 29?

(Testimony of James B. McPherson.)

A. I did not. As a matter of fact, I didn't count the supervisors either. There would be three extra, making it 32 with the supervisors.

Q. 32, plus Bash, and he would be 33?

A. That is correct.

Q. Now, did Mr. Bash have jurisdiction over anyone other than people within that 32?

A. Only operations personnel.

Q. Would you please answer my question? I asked you whether Mr. Bash had jurisdiction over anyone other than those 32 people? [870]

A. No, sir.

Q. Now, do you in the course of your work go into the operating room? A. I do.

Q. Do you do it daily?

A. I would say probably 6, 8 times a day.

Q. Do you know the 32 employees in the operating room? A. I do.

Q. Do you talk with them yourself?

A. I do.

Q. Do you discuss matters relating to their working conditions with them individually?

Mr. Brotsky: Just a moment. I will object to the relevancy of this.

Trial Examiner Ruckel: Read the question, please.

(Question read.)

Trial Examiner Ruckel: He may answer.

A. I do.

Q. (By Mr. Ernst): Has that been your practice for the last several years? A. It has.

(Testimony of James B. McPherson.)

Q. Do you talk to them in the operating room about those things? A. I do.

Q. Do they come into your office to talk to you about those [871] things?

Mr. Brotsky: Same objection.

Trial Examiner Ruckel: He may answer.

A. They do.

Q. (By Mr. Ernst): Do you recall ever having refused to talk to anybody about such matters?

A. I do not.

* * *

Q. (By Mr. Ernst): Mr. McPherson, does Mr. Bash prepare the watch lists for the operating room?

A. He does.

Q. Do you look them over before they are posted?

A. I do.

Q. Does Mr. Bash handle the questions of the employees with respect to what watch they are working on? A. He does.

Q. Do you do that also?

A. On occasion if it is referred to me, yes.

Q. Do employees come directly to you about their watch assignments [872] from time to time?

Mr. Berke: I object to that. The purpose here of counsel going into this matter is pretty obvious. He says Mr. Bash not only prepares but he is handling those questions.

You are now trying to demonstrate that Mr. Bash doesn't, or at least, it is a minimum.

Trial Examiner Ruckel: Objection sustained.

* * *

(Testimony of James B. McPherson.)

Q. (By Mr. Ernst): Does Mr. Bash handle matters of errors in computation of pay among employees in the operating room?

A. He does. [873]

* * *

Q. Now I would like to call your attention to the period on January 21st beginning at about 4:15, 4:00 or 4:15 in the afternoon, and do you recall that date and time? A. I do.

Q. Did you receive any telephone calls from any of the employees at that time? A. I did. [875]

Q. From whom? A. Mr. Bash.

Q. And would you state at about what time that telephone call came in to you?

A. At approximately 4:15.

Q. And what did Mr. Bash say?

A. Mr. Bash told me that a group of the evening watch operators had left their circuit and had refused to return to their work until such time as Mr. Jones had been reinstated.

Q. What did you then do or say?

A. I told Mr. Bash to do nothing until he heard further from me.

Q. And then what did you do?

A. I immediately went into General Boatwright's office.

Q. Now, did you thereafter give any instructions to Mr. Bash as to what he should do?

A. Immediately thereafter?

Q. Any time thereafter? A. Yes, I did.

(Testimony of James B. McPherson.)

Q. What was the next instructions you gave him?
Take it a bit at a time.

A. All right.

Q. When was it?

A. Approximately at 5:15.

Q. And how did you give him his instructions? [876]

A. By telephone.

Q. What did you tell him to do?

A. I told Mr. Bash that if the—to ask the operators to return to work, Mr. Jones was not going to be reinstated, if they refused to return to work that he was to discharge them.

Q. Now, did you thereafter talk to the group of the employees from the operating room?

A. I did.

Q. Where did you talk to them?

A. In the reception lobby of our general office, Room 652.

Q. How did this meeting come about, what led up to it?

A. I received a telephone call from the PBX Operator informing me that there was a delegation out there that wished to talk to me.

Q. And where were you then?

A. I was in General Boatwright's office. [877]

Q. Where did you go?

A. I went out to meet the group.

Q. I would like to have you, to the best of your recollection, state who said what first?

A. I don't recall the individual who opened the conversation, but one remark that "We have just

(Testimony of James B. McPherson.)

been fired by Mr. Bash, is that right?" And I replied that that was right.

Q. Then what was said?

A. Someone asked the reason.

Q. What did you say in reply?

A. That it was my understanding that they had refused to work until Mr. Jones had been reinstated.

Q. Did you say anything further at that time?

A. I asked them if that was correct.

Mr. Brotsky: When you say "them"——

The Witness: I refer to the group of delegates. It was probably 8, as I recall.

Mr. Brotsky: You weren't addressing anyone particularly?

The Witness: I was speaking to the individual who was speaking to me, I don't recall the name of that person.

Q. (By Mr. Ernst): Was that person apparently acting as spokesman for the group?

A. Apparently so.

Q. Now, what did you then say in addition to asking him whether it was correct, this information that they had been [878] refusing to work?

A. They acknowledged that it was correct, that they did not intend to return to work until Mr. Jones was reinstated.

Q. What did you then say?

A. I didn't reply to that. Someone asked me the reason for Mr. Jones' discharge.

Q. Yes. And what did you say then?

(Testimony of James B. McPherson.)

A. And I replied that the reason was that Mr. Jones was discharged for insubordination.

Q. Now, do you recall what was said in reply exactly to that statement?

A. Someone asked me what I actually meant by "insubordination." I told them that Mr. Jones had been instructed by the chief operator to practice in order to bring his punching speed up equal to what was considered the slowest speed of the other APO operators, and in order to do so he was to return to the Shanghai circuit and practice on company time.

Q. Now, did you tell the employees anything about their work at that time? A. I did not.

Q. Did you tell them that they were fired at that time?

A. I had confirmed that previously, and I again repeated that the entire group should return to their jobs.

Q. Now, who talked to you after that, do you recall?

A. Miss Pottle, as I recall, took the floor at that time. [879]

* * *

Q. (By Mr. Ernst): Well, eventually did Miss Pottle stop talking and you were able to reply?

A. She did.

Q. And what did you say in reply, or what was the general [880] substance of her objection?

A. The general substance was the chief operator.

Q. All right.

(Testimony of James B. McPherson.)

Mr. Berke: She what?

Trial Examiner Ruckel: The chief operator.

Q. (By Mr. Ernst): Now, what did you say in reply to her when she finished?

A. I told Miss Pottle that we were not there for the purpose of discussing the ability or the character of the chief operator, we were there purely for the purpose of determining whether or not they were going to return to their jobs.

Q. Who do you mean "they were going to return"? A. The group that were there.

Q. And what did you tell them then?

A. I told them that they should return to their jobs, if they didn't I had no alternative but to discharge them.

Q. And did they then return?

A. They did not.

Q. Now, up until that time had you told these people that they were fired?

Mr. Brotsky: Just a moment.

Mr. Berke: The witness has already testified that he confirmed the firing, one of the first things he said, because one of the first questions that was addressed to him, if Bash had fired him, he said, [881] "Yes."

Trial Examiner Ruckel: That is my understanding of it.

Q. (By Mr. Ernst): You told them that at the opening of the conversation, is that correct?

A. I did.

Q. Did you tell them that again prior to the time Miss Pottle started to talk?

(Testimony of James B. McPherson.)

A. As I recall, I told them twice after that time.

Q. Once before Miss Pottle talked?

A. Yes.

Q. And then what did the group do?

A. Miss Pottle, I believe——

Q. What did the group do?

A. Oh, the group left. [882]

* * *

Q. (By Mr. Ernst): Now, Mr. McPherson, I would like to refer you to General Counsel's Exhibit 10, and would you say whether that form of notice was sent out with the pay checks of the persons involved in this proceeding? A. It was.

Q. When was that form prepared?

A. As I recall, it would be either Monday or Tuesday of the following week after the discharge of the persons involved.

Q. Did you make any reference to that form when you talked to the employees that were in the ante room in your office and by the telephone operator at 5:15 on Friday afternoon, the 21st?

A. I did not.

Q. Now, did you direct the computation of the pay of the employees involved in this proceeding?

A. I did.

Q. Did Mr. Jones receive a check for his pay?

A. Yes.

Q. Did that include pay for the work that he had done?

Mr. Brotsky: Just a moment.

Mr. Berke: What is the relevancy?

Trial Examiner Ruckel: It is not contended that

(Testimony of James B. McPherson.)

he did [886] not get the pay that was due him?

Mr. Ernst: I think it is extremely material and relevant, Mr. Examiner.

Mr. Berke: We don't take the position he didn't get his pay check, on the contrary he got it.

Mr. Ernst: I am trying to go into the differences in the treatment of the various people involved.

Trial Examiner Ruckel: Of course, he didn't get as much as the others, he didn't work quite as long, did he?

Mr. Ernst: He got more than the others.

Trial Examiner Ruckel: I still don't see the relevancy of it. They might pay him two or three months——

Mr. Ernst: Well, Mr. Examiner, it is simply this: Jones was paid for the work he did, he received two weeks salary in lieu of notice and received accrued vacation pay. The contract with the ACA that was kept in operation by virtue of the notices that were shown required that a person who was discharged should receive two weeks salary or two weeks notice. Jones got it. The contract further provided that any person who was, that is, had his employment terminated for any reason whatsoever, or who quit or left was entitled to accrued vacation pay.

Trial Examiner Ruckel: I will sustain the objection, but what you have just stated to me may stand as an offer of proof. [887]

Mr. Ernst: I further offer to prove that the

(Testimony of James B. McPherson.)

other people all received their pay for the work they did, plus accrued vacation. [888]

* * *

Q. (By Mr. Ernst): Mr. McPherson, during the course of the picketing by the people involved in this proceeding following January 21st, were you present at a meeting in which Mr. Barlow, Secretary of the ACA, Local 9, was discussing with the company the matter of the picketing, and such things?

Mr. Berke: Just a moment. Objected to as incompetent, irrelevant and immaterial.

Trial Examiner Ruckel: Well, it is preliminary. He may answer.

A. I was.

Q. (By Mr. Ernst): Did the question arise then as to whether the ACA was the choice of the majority of the employees in the unit?

Mr. Berke: Just a moment. Object to that as being irrelevant. [889]

Trial Examiner Ruckel: It is still preliminary, I take it. He may answer.

Did the question arise?

A. Yes.

Q. (By Mr. Ernst): It did?

A. Yes.

Q. Did he say as to how you could determine whether they did represent the majority?

Mr. Berke: Is that to be answered "yes" or "no"?

(Testimony of James B. McPherson.)

Mr. Ernst: Yes.

Q. (By Mr. Ernst): Or how did he say it, if he did?

Trial Examiner Ruckel: Well, I don't know whether you are getting down to the material matter or not. What is the difference?

Mr. Ernst: I am going into whether the ACA admitted that—whether or not it represented the majority to be determined by the number of people on the picket line out of the unit, and the ACA did not have a majority at that time.

Mr. Berke: How is that relevant to this proceeding?

Trial Examiner Ruckel: It is not contended they had a majority; in fact, it seemed to show that—I won't say what I was going to say, but it is not in issue, whether they had a majority or not. They might have had a very small minority; the issues would be the same.

Mr. Ernst: Well, I offer to prove that they were not [890] the choice of the majority.

Trial Examiner Ruckel: It is not contended that they were.

Mr. Berke: This isn't an "R" proceeding.

Mr. Ernst: Nothing further.

Trial Examiner Ruckel: There is no refusal to bargain. Sustain an objection to the offer. [891]

* * *

Q. Did Mr. Bash have the authority to recommend with respect to hiring and firing?

(Testimony of James B. McPherson.)

A. He did.

Q. Did he have the authority to suspend employees? A. He did.

Q. On the occasion that 4:00 to mid watch assembled in the lobby, or ante-room to your office, you immediately confirmed the fact, in response to a question, that they had been fired, is that correct?

A. That is correct.

Q. That was before Sylvia Pottle, or any of the others, raised the issue as to the reason for Mr. Jones' discharge, is that correct? A. Correct.

Q. And you later reaffirmed that discharge twice during the period that the group were in that ante-room?

A. At the same time that I offered their jobs back to them, yes.

Q. Yes, but prior to offering their jobs back to them you had confirmed their discharge, had you not? A. I had. [903]

Q. Now, did you tell the group, or anyone in the group that they would get their checks in the mail?

A. I did. [904]

* * *

Q. (By Mr. Brotsky): Well, you had had a policy, that is the company, of discussing grievances prior to November 6th with a shop committee, had you not?

A. That is correct.

Q. And after November 6th that policy changed?

A. Correct.

(Testimony of James B. McPherson.)

Q. However, you did both before and after that time discuss grievances and other matters individually with employees, isn't that so?

Trial Examiner Ruckel: In the presence of a representative.

Q. (By Mr. Brotsky): Yes, in the presence of a representative or alone?

A. No. The thing is in one case they asked for a representative, and he said a representative could come along.

Trial Examiner Ruckel: That is right.

Q. (By Mr. Brotsky): Is that right?

A. That is correct.

Q. And you had posted no bulletin or notice on the company [905] bulletin board prior to January 1st to the effect that you would not see an individual with his representative at that time, had you?

Mr. Ernst: I object to that as irrelevant, whether they put that particular notice up there or not.

Trial Examiner Ruckel: He may answer.

Mr. Brotsky: It goes to the question of policy.

The Witness: May I have that repeated, please?

Trial Examiner Ruckel: Read the question back.

A. I had posted no notice to that effect.

Q. (By Mr. Brotsky): To your knowledge, was any such notice posted by any company official?

A. To the effect that I would not see an individual?

Q. That is correct.

A. The notice of November 6th, as I recall,

(Testimony of James B. McPherson.)

makes reference to grievances being limited to one person.

Q. Then there was no change in that particular policy other than allowing a person to have a representative, is that correct?

A. That is correct. [906]

* * *

Q. (By Mr. Brotsky): Now when you were talking to the group at 5:15 did you direct your remarks particularly to an individual throughout the conversation?

A. I did, and that individual appeared to be the spokesman of the group at the time.

Q. And were there comments made by other members of the group?

A. As I recall, there were comments made among themselves. They weren't loud enough for me to overhear.

Q. Would you say the situation was pretty confused, excited, the people were excited, the situation was confusing?

A. To the best of my recollection, there was one lady only that was really confused.

Mr. Brotsky: That is all I have.

Trial Examiner Ruckel: Any further questions, Mr. Ernst?

Mr. Ernst: I will try to make it extremely quick. [910]

* * *

(Testimony of James B. McPherson.)

Redirect Examination

By Mr. Ernst:

* * *

Q. (By Trial Examiner Ruckel): Now, at the conference with Mr. Andersen and General Boatwright, at which the Jones matter [922] was discussed, was there any discussion there as to the possible activity of the other employees of such a nature as subsequently materialized?

A. No, sir.

Q. The possibility of the others refusing to work or protesting Jones' discharge and what policy the company should take was not discussed?

A. No, sir; it was not.

Q. It was not until Mr. Bash had called you with respect to the evening shift?

A. That is correct, approximately 4:20.

Q. That you then had another conference with Mr. Andersen? A. Yes, sir.

Trial Examiner Ruckel: Further questions?

Recross-Examination

By Mr. Berke:

Q. Was there a discussion on the occasion that you and General Boatwright talked to Mr. Andersen about what the Union might do with respect to the action you might take against Mr. Jones?

A. You are now talking about the one in the morning up in Mr. Andersen's office?

Q. That is right.

A. There was no discussion, no, sir. [923]

* * *

In the United States Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

GLOBE WIRELESS, LTD.,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, as amended (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled “In the Matter of Globe Wireless, Ltd., and Lorraine E. Conger, Lillie I. Friend, Paul Guerrero, John Gyuresik, Albert E. Hinde, Charles A. Jones, Virginia Kelso, Violet A. Leach, Jesse E. McLin, Homer E. Mulligan, Rudolph W. Niemi, Malcolm G. Parks, Louis Pena, Sylvia Pottle, Bruce E. Risley, George J. Rosengren, David E. Sheaffer, Pauline Smith, Leslie T. Wheeler, Viola H. Williams, Individuals,” the same being known as Case No. 20-CA-193, before said Board, such transcript including the pleadings and testimony and evidence

upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating Horace A. Ruckel Trial Examiner for the National Labor Relations Board, dated July 26, 1949.

(2) Stenographic transcript of testimony taken before Trial Examiner Ruckel on July 26, 27, 28, 29, and 30, 1949, together with all exhibits introduced in evidence.

(3) Respondent's telegram, dated August 8, 1949, requesting extension of time for filing brief with the Trial Examiner.

(4) Copy of Acting Chief Trial Examiner's telegram, dated August 9, 1949, granting all parties extension of time for filing briefs.

(5) Respondent's telegram, dated September 3, 1949, requesting further extension of time for filing brief with the Trial Examiner.

(6) Copy of Chief Trial Examiner's telegram, dated September 7, 1949, granting all parties further extension of time for filing briefs.

(7) Respondent's proposed findings of fact and conclusions of law, dated September 16, 1949.

(8) Copy of Trial Examiner Ruckel's Intermediate Report, dated October 28, 1949 (annexed to

item 27 hereof); order transferring case to the Board, dated October 28, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(9) Charging Parties' request for oral argument, dated November 7, 1949. (Denied in Board's Decision and Order dated March 20, 1950, page 1.)

(10) Regional Director's telegram, dated November 16, 1949, requesting extension of time for filing exceptions and brief.

(11) Charging Parties' telegram, dated November 16, 1949, requesting extension of time for filing exceptions to the Intermediate Report.

(12) Copy of Board's telegram, dated November 17, 1949, granting all parties extension of time for filing exceptions and briefs.

(13) Charging Parties' motion to augment record, dated November 22, 1949. (Granted; see Board's Decision and Order, dated March 20, 1950, page 1, footnote 1.)

(14) Respondent's opposition to motion to augment record, received December 8, 1949. (See footnote 1, page 1, of the Board's Decision and Order, dated March 20, 1950.)

(15) Charging Parties' telegram, dated December 8, 1949, requesting further extension of time for filing exceptions and brief pending disposition by Board of motion to augment record.

(16) General Counsel's telegram, dated Decem-

ber 9, 1949, requesting further extension of time for filing exceptions and brief.

(17) Copies of Board's telegrams, dated December 9, 1949, denying requests for further extension of time for filing exceptions and briefs.

(18) Regional Director's telegram, dated December 12, 1949, granting all parties still further extension of time for filing briefs.

(19) Copy of Board's telegram, dated December 12, 1949, granting all parties still further extension of time for filing briefs.

(20) General Counsel's exceptions to the Intermediate Report, received December 12, 1949, together with affidavit of service and United States Post Office return receipts thereof.

(21) Respondent's exceptions to the Intermediate Report, received December 13, 1949.

(22) Charging Parties' exceptions to the Intermediate Report, received December 13, 1949.

(23) Respondent's telegram, dated December 30, 1949, requesting time within which to file a reply brief.

(24) Copy of Board's telegram, dated January 3, 1950, advising all parties that Respondent was granted permission to file a reply brief.

(25) Respondent's telegram, dated January 10, 1950, requesting extension of time for filing reply brief.

(26) Copy of Board's telegram, dated January 11, 1950, granting Respondent extension of time for filing reply brief.

(27) Copy of Decision and Order issued by the National Labor Relations Board on March 20, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 3rd day of November, 1950.

[Seal] /s/ FRANK M. KLEILER,
Executive Secretary.

NATIONAL LABOR
RELATIONS BOARD.

[Endorsed]: No. 12736. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Globe Wireless, Ltd., Respondent. Transcript of Record. Petition for Enforcement of an Order of the National Labor Relations Board.

Filed November 10, 1950.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH PETITIONER INTENDS TO RELY, FILED PURSUANT TO RULE 19 (6)

In this proceeding, petitioner, National Labor Relations Board, hereinafter called the Board, will urge and rely on the following points:

1. Substantial evidence supports the Board's finding that respondent discharged 19 employees for engaging in a strike.
2. The Board's conclusion that respondent by these discharges violated Section 8 (a) (1) and (3) of the National Labor Relations Act, as amended, is valid and proper.
3. Substantial evidence supports the Board's finding that respondent through a supervisory employee made threatening and coercive anti-union statements to several employees.
4. The Board's conclusion that respondent by these statements violated Section 8 (a) (1) of the Act is valid and proper.
5. The Board's procedure in alleging and in proving the aforesaid violations of Section 8 (a) (1) and (3) of the Act was authorized by the Act and was valid and proper.

6. The Board's order is in all respects valid and proper.

/s/ A. NORMAN SOMERS,
Assistant General Counsel, National Labor Relations
Board.

Washington, D. C., November 6, 1950.

[Endorsed]: Filed Nov. 10, 1950.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN
ORDER OF THE NATIONAL LABOR RE-
LATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. III, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Globe Wireless, Ltd., San Francisco, California, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Globe Wireless, Ltd. and Lorraine E. Conger, Lillie I. Friend, Paul Guerrero, John Gyuresik, Albert E. Hinde, Charles A. Jones, Virginia Kelso, Violet A. Leach, Jesse E. McLin, Homer E. Mulligan, Rudolph W. Niemi, Malcolm G. Parks, Louis Pena, Sylvia Pottle, Bruce E. Risley, George J.

Rosengren, David E. Sheaffer, Pauline Smith, Leslie T. Wheeler, Viola H. Williams, Individuals, Case No. 20-CA-193.”

In support of this petition the Board respectfully shows:

(1) Respondent is a Nevada corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on March 20, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

Order

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the Board hereby orders that the Respondent Globe Wireless, Ltd., San Francisco, California, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in labor organ-

izations of its employees by discharging or refusing to reinstate or in any other manner discriminating against them in regard to their hire or tenure of employment or any term or condition of their employment;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, and to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the employees named in Appendix A, attached hereto, immediate and full reinstatement to their former or substantially equivalent positions,³⁷ and make them whole for any loss of

³⁷In accordance with the Board's consistent interpretation of the term, the expression "former or substantially equivalent position" is intended to mean "former position wherever possible, but if such position is no longer in existence, then to a substantially equivalent position." See *The Chase National Bank of the City of New York, San Juan, Puerto Rico Branch*, 65 NLRB 827.

wages suffered as a result of the discrimination against them, in the matter described in the section above-entitled *The Remedy*;

(b) Post immediately at its office and place of business in San Francisco, California, copies of the notice attached hereto and marked Appendix A.³⁹ Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region in writing, within twenty (20) days from the date of receipt of this Order what steps Respondent has taken to comply herewith.

(3) On March 20, 1950, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, the Board is cer-

³⁹In the event that this Order is enforced by a decree of a Court of Appeals, there shall be inserted before the words, "A Decision and Order" the words, "A Decree of the United States Court of Appeals Enforcing."

tifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR
RELATIONS BOARD,

By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C., this 6th day of November, 1950.

Appendix A

Notice to All Employees

Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form, join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8 (a) (3) of the amended Act.

We Will Offer to the employees named below immediate and full reinstatement to their former or substantially equivalent positions without prejudice to any seniority or other rights and privileges previously enjoyed, and make them whole for any loss of pay suffered as a result of the discrimination against them, as set forth in the Decision and Order:

Lorraine E. Conger	Malcolm G. Parks
Lillie I. Friend	Louis Pena
Paul Guerrero	Sylvia Pottle
John Gyuresik	Bruce E. Risley
Albert E. Hinde	George J. Rosengren
Virginia Kelso	David E. Sheaffer
Violet A. Leach	Pauline Smith
Jesse E. McLin	Leslie T. Wheeler
Homer E. Mulligan	Viola H. Williams
Rudolph W. Niemi	

All our employees are free to become or remain members of the above-named union or any other

labor organization except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the amended Act. We will not discriminate in regard to hire or tenure of employment or any term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Dated

GLOBE WIRELESS, LTD.,
(Employer)

By
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed Nov. 10, 1950.

[Title of Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

The President of the United States of America

To: Globe Wireless, Ltd., 141 Battery Street, San Francisco, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor

Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 10th day of November, 1950, a petition of the National Labor Relations Board for enforcement of its order entered on March 20, 1950, in a proceeding known upon the records of the said Board as "In the Matter of Globe Wireless, Ltd., and Lorraine E. Conger, et al., individuals, Case No. 20-CA-193," and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 10th day of November in the year of our Lord one thousand, nine hundred and fifty.

[Seal] /s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

Marshal's Return on Service attached.

[Endorsed]: Filed Nov. 15, 1950.

[Title of Court of Appeals and Cause.]

NOTICE OF MOTION

To: National Labor Relations Board, Petitioner,
and A. Norman Somers, Esq., Assistant General
Counsel, National Labor Relations Board, Its
Attorney:

You and each of you will please take notice that on the 8th day of January, 1951, at the hour of 10:00 o'clock a.m., or as soon thereafter as the parties can be heard, Globe Wireless, Ltd., Respondent above named, will move the above-entitled Court, at its courtroom in the Post Office Building, 7th and Mission Streets, San Francisco, California, for an Order Granting Leave to Adduce Additional Evidence.

Said motion will be based upon this Notice, the Motion attached hereto, the Affidavit attached hereto, Section 10(e) of the National Labor Relations Act, as amended, and the records, papers and files in this proceeding.

Dated: San Francisco, December 10, 1950.

/s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHEGER &
HARRISON,

Counsel for Respondent.

[Title of Court of Appeals and Cause.]

MOTION FOR LEAVE TO ADDUCE
ADDITIONAL TESTIMONY

Comes now Globe Wireless, Ltd., Respondent in the above-entitled proceeding, and respectfully moves the Court for an Order Granting Leave to Produce Additional Evidence.

Facts

This is a proceeding to enforce an Order of the National Labor Relations Board. The Order was issued after hearing based upon unfair labor practice charges filed with the petitioner. The charges were against Respondent, which is engaged in the public utility business of a common carrier of interstate and foreign radio messages for hire, with offices in San Francisco, New York, Honolulu, Manila and Shanghai. The twenty individuals involved in the charge were employed by Respondent in transmitting such radio messages between San Francisco, New York, Honolulu, Manila and Shanghai. The order directed that nineteen of the twenty individuals involved in the charges should be offered reinstatement and each of them made whole for any loss of wages between his abandonment of the strike and the time when he is offered a reinstatement to his former or substantially equivalent position by Respondent.

Respondent, on January 21, 1949, discharged one of its employees, Charles Jones. The Board found

that this discharge was lawful, stating, "Jones admitted having flatly refused to perform certain tasks assigned him during his working time." The discharge of Jones led to a refusal of other employees to perform their work until such time as Jones was reemployed. The Board held, "The trial examiner correctly found that as the strike was in protest against a lawful discharge, it was an economic strike and the Respondent was free to replace such strikers at any time prior to their unconditional request for reinstatement." The Board concluded, however, that the nineteen persons (other than Jones) involved in the proceeding had been "discharged" by Respondent, and therefore Respondent had engaged in an unfair labor practice. The trial examiner had concluded the Respondent's actions with respect to the strikers did not constitute any discrimination in regard to hire or tenure of employment and was not otherwise an unfair labor practice, stating, "It is clear that any or all of them could have had their jobs back at any time before they were filled by new employees." The Board reached a contrary conclusion, stating, "As the Respondent did not attempt to settle the strike or solicit the return of the strikers, we find no basis for concluding, as did the trial examiner, that 'any or all of them could have had their jobs back at any time before they were filled by new employees.' "

The foregoing facts are clearly set forth in the decision of the Board and attached intermediate report of the trial examiner.

During the course of the proceedings before the Board Respondent was denied the opportunity to discover and to introduce evidence. Thus Respondent filed (in accordance with the rules and regulations of the Board and Section 11(1) of the National Labor Relations Act and Section 5(c) of the Administrative Procedure Act), its motion for subpoenas to take depositions before trial of the twenty persons involved in the proceeding; Respondent was denied subpoenas and the opportunity to take depositions. The trial examiner upon motion, struck the 6th, 7th, 8th and 9th defenses of Respondent's answer and Respondent was not permitted to introduce evidence with respect to the defenses; thereafter the Board reached conclusions contrary to the allegations of such defenses. The trial examiner, on numerous occasions, sustained objections to Respondent's attempts to introduce evidence as to a number of issues; thereafter findings with respect to such issues were made by the Board in its decision overruling the trial examiner. In the trial of the case before the trial examiner, there was not a full submission of facts as to whether the jobs of the nineteen persons involved, other than Jones, were available to them at any time, whether the strike had or had not been abandoned and whether or not Respondent had ever failed or refused to return the nineteen strikers to their jobs, either before or after they had been replaced by new permanent employees; the Board, nevertheless, based its order upon assumptions with respect to these issues.

A more complete statement of the facts with respect to each of these will appear below in connection with our statement of the objects of the motion.

The Objects of the Motion and the Basis Thereof

We shall hereafter state the general nature of the evidence that we ask leave to adduce, the materiality of that evidence and the ground for the failure to adduce such evidence before the trial examiner.

1. Evidence excluded but relating to findings of the Board:

(a) The trial examiner concluded that Respondent was under no obligation to reinstate any of the strikers. He found that the strikers were engaged in an economic strike and continued, "It is clear that any or all of them could have had their jobs back at any time before they were filled by new employees. It is not in dispute that the strike is still in effect, that there has been no request for reinstatement following the strike, and that Respondent has filled the strikers' jobs with other and permanent employees. In these circumstances, and under familiar decisions of the Board, Respondent is not obligated now to reinstate these strikers." (Tr. Ex. Rep., p. 7, 11. 54-57, p. 8, 11. 1-3). The Board, however, reached a contrary conclusion stating, "As the Respondent did not attempt to settle the strike or solicit the return of the strikers, we find no basis for concluding, as did the Trial Examiner, that 'any or all of them could have had their jobs back at any time before they were filled

by new employee.' '' (B.D. & O. p. 4, n. 15.) Based on this finding that the strikers' jobs were not available to them when they were replaced, the Board directed reinstatement of the strikers.

The trial examiner struck Respondent's defenses 7, 8 and 9, which deny any obligation to reinstate the strikers (Tr. 24-28). This ruling was sustained by the Board over the exception of Respondent (Exception III, 2).

There is no evidence in the record supporting the Board's statement that Respondent did not attempt to settle the strike and did not solicit the return of the strikers. Neither is there any evidence in the record that the strikers ever wished to return to work except on the condition that Jones would be returned with them.

Respondent therefore asks this Court to order the Board to take any evidence Respondent may wish to offer to prove that the jobs of the strikers continued available to them up to the time their jobs were filled by new employees and any evidence that Respondent may offer with respect to availability to the strikers of employment with Respondent subsequent to the time that their jobs were filled by new employees; unless the Board amends its decision and order so as to find: "The nineteen strikers were replaced by new permanent employees while they were on economic strike and while their jobs were available to them if they would give up their demand that Jones be reinstated."

(b) The Board reversed the trial examiner's conclusion that there were no unfair labor practices

in the matters covered by the complaint other than the discharge of Jones and the alleged discrimination in the hire and tenure of employment with respect to the other nineteen. In so doing, the Board made findings, contrary to the conclusions of the trial examiner, that Respondent sought to eliminate the ACA* and that an order to cease and desist from in any manner infringing on the rights of employees guaranteed by the Act was necessary to effectuate the policies of the Act because of "Respondent's conduct in the past." Thus the Board made a finding that the ACA was "a union which the Respondent sought to eliminate." (B.O. p. 3, 1. 30). It made certain findings with respect to the effect of statements by Bash, the Chief Operator of the Respondent in its San Francisco office, because of their "context" (B.O. p. 3, 11. 5-23). It also found:

"We are convinced on the record as a whole that the unfair labor practices committed by the Respondent are potentially related to other unfair labor practices prescribed and that danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. In order to make effective the interdependent guarantees of Section 7 and thus

*We use the term ACA to refer to the American Communications Association, a labor organization affiliated with the Congress of Industrial Organizations at the time of the hearing before the trial examiner but which has since been expelled from the CIO in connection with the CIO purge of Communists from its organization.

effectuate the policies of the Act, we shall, accordingly, order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.” (B.D. & O. p. 7, 11. 1-8.)*

The trial examiner, however, refused to permit Respondent to introduce evidence going to these matters and the Board has sustained these rulings. Respondent was denied the opportunity to put in evidence that it was ready to deal with the ACA as soon as it would file the non-Communist affidavits and be certified with the Board (Tr. pp. 455-61; Exc. I, 4). Respondent was prevented from putting in evidence with respect to the intolerable tactics of the ACA contingent among its employees in seeking, by job action and strike activity while remaining on the job, to prevent the company from operating its establishment. (Tr. pp. 258-263). Respondent was denied the opportunity to show that it was ready to meet with the representatives of the strikers at convenient and reasonable times and places to discuss any and all grievances that these persons might have with respect to their conditions of employment (Tr. pp. 201-205, etc.). Respondent was also prohibited from going into the general background of the controversy among its employees

*References to the Board's decision and order are abbreviated B.D. & O.; references to the Reporter's transcript of the proceedings at the hearing before the trial examiner are abbreviated Tr.; references to the trial examiner's intermediate report are abbreviated Tr. Ex. Rep.

as to who should represent them, and Respondent's attempts to meet these problems without a violation of the law in face of the continuous refusal of the ACA to file the non-Communist affidavits and its refusal to accept Respondent's invitation to bargain with it if it represented a majority of its employees (Tr. 406-407, 416-423, 455, 461, 631, 633; see also Exception I, 4; 1, 10; II, 1; II, 6; II, 13; III, 2; III, 5; III, 6). Respondent further was denied the opportunity to prove that the ACA was demanding that it be recognized as the sole and exclusive representative of the employees in the unit appropriate for collective bargaining purposes at a time when the ACA was admitting that it was not the choice of a majority of the employees in such bargaining unit (Tr. pp. 890-891). Respondent's defenses 7, 8 and 9, which go directly to the issues covered by the findings quoted above, were stricken from its answer, and it was not permitted to introduce any evidence with respect thereto (See Exception III, 2, 5, 6).*

Respondent therefore asks this Court to order the Board to take any evidence Respondent may wish to offer to contravene the findings quoted or referred to above unless the Board amends its decision and order by striking such findings therefrom.

(c) The Board found, contrary to the findings of the trial examiner, that "it is necessary to order reinstatement with back pay, as hereinafter provided, in order to effectuate the policies of the Act" (B.D. & O., p. 6, 11. 35-37). The Board also found,

*The portion of Respondent's Answer raising these defenses are appended to this Motion.

contrary to the findings of the trial examiner, "In order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act, we shall, accordingly, order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act." (B.D. & O., p. 7, 11. 5-8.) In connection therewith the Board referred to *May Department Stores v. Labor Board*, 326 U. S. 376. These findings were made although the trial examiner struck the 7th, 8th and 9th defenses from Respondent's Answer and the Board sustained those rulings (B.D. & O., p. 2, n. 3; Exception III, 2).

Respondent therefore asks this Court to order the Board to take any evidence Respondent may offer with respect to the issues covered by the findings and conclusions quoted and referred to above unless the Board strikes them from its decision and so maintains the position it took when it struck Respondent's defenses 8 and 9 from the Answer.

2. Evidence with respect to conclusions of the Board based on factual issues that were not litigated:

The Board ordered reinstatement of each of the nineteen strikers with back pay from the date of his abandonment of the strike up to the date on which Respondent offered him reinstatement. This is based on an assumption that the strikers abandoned their strike and did so prior to the time that Respondent offered reinstatement. The Board admits in its decision that there is no evidence in the record that the strike has ever been abandoned and, of

course, there can therefore be no basis in the record for a finding that any one of the strikers was not offered reinstatement prior to the time that he abandoned the strike, if he has ever done so.

These issues were not litigated and could not have been litigated in the hearing, for, as the trial examiner found, the strike was continuing at the time of the hearing (Tr. Ex. Rep. p. 7, 1. 56).

Respondent therefore asks this Court to order the Board to take evidence as to whether there has ever been an abandonment of the strike, and, if any evidence be introduced that there has been such abandonment of the strike, to take any evidence Respondent may offer with respect to any offers of reinstatement Respondent may have made to any of the nineteen strikers unless the Board strikes from its decision any reference to an offer of reinstatement as of this time or any time in the future and any reference to back pay.

3. Evidence excluded by denial of subpoenas and opportunity to take depositions before trial:

Prior to the opening of the hearing before the trial examiner, Respondent applied to the Board, in compliance with the rules and regulations of the Board, for subpoenas requiring each of the charging parties to appear and give testimony by deposition upon oral examination for the purpose of discovery and for use as evidence in the proceeding before the Board. These applications were renewed when the hearing opened (Tr. 6-17). The outlined procedure for the taking of the depositions was in accordance with the procedure existing under Rules 26 and 27

of the Federal Rules of Civil Procedure. The applications were denied by the Regional Director and the trial examiner; as a result, Respondent was unable to discover the evidence that it would have discovered through such depositions. In this respect Respondent was not provided due process of law; in this connection it is to be noted that during the trial the General Counsel for the National Labor Relations Board had statements (taken by Board staff) from all of the charging parties, and also from several employees of Respondent.

Respondent therefore asks this Court to order the Board to take any additional evidence that Respondent may discover through the taking of depositions of any or all of the chargeable parties, and Respondent further asks this Court to issue an ancillary Order directing the National Labor Relations Board to make available to counsel for Respondent all statements taken in connection with the investigation of this case and directing the Board to issue subpoenas for the taking of such depositions as are requested by Respondent after consideration of such statements in the hands of the Board.

San Francisco, California, December 10, 1950.

Respectfully submitted,

/s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHLEGER &
HARRISON.,

Counsel for Respondent.

Excerpts from Answer of Globe Wireless, Ltd.,
20-CA-193

Sixth Defense

X.

Upon information and belief Respondent alleges that American Communications Association made and filed each and all of the charges upon which the complaint is based.

XI.

Upon information and belief Respondent alleges that said American Communications Association has not complied with the provisions of subsections (f), (g) and (h) of Section 9 of the Act.

Seventh Defense

XII.

Paragraph X of the Sixth Defense is incorporated herein by reference as though set forth in full.

XIII.

Upon information and belief Respondent alleges that any and all concerted activities for the purposes of collective bargaining, mutual aid and protection, or for any other purpose, engaged in by the persons named in Paragraph V of the Complaint while employees of Respondent were and are activities of, for and on behalf of said American Communications Association. Said concerted activities, and any and all concerted activities of said American Communications Association, and the practices of said American Communications Association, its officers and its members, had the intent and the necessary effect of burdening or obstructing com-

merce and impairing the interest of the public in the free flow of interstate commerce in radio telegraphic communication.

XIV.

Respondent alleges that the acts of said American Communications Association, its officers, agents and its members, including those carried on by the persons listed in Paragraph V of the Complaint, have a close intimate and substantial relief to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening or obstructing commerce and the free flow of commerce in violation of the policies of the National Labor Relations Act.

XV.

Upon information and belief respondent alleges that said American Communications Association, its officers and agents and members, including those whose names are listed in paragraph V of the complaint, have by their acts restrained and coerced those employees of Globe Wireless who have chosen not to become members of said American Communications Association, in their right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other material aid or protection and in their right to refrain from any or all of such activities.

XVI.

Respondent alleges that said American Communications Association, its officers and agents and

members, including those whose names are listed in paragraph V of the complaint, have attempted to cause respondent to discriminate against those employees who have chosen not to belong to said American Communications Association in regard to hire or tenure of employment and other terms and conditions of employment.

XVII.

Respondent alleges that said American Communications Association, its officers and agents and members, including those whose names are listed in paragraph V of the complaint, have induced or encouraged the employees of other employers to refuse in the course of their employment to handle messages that were or were destined to be handled by respondent or to perform services with respect to messages that were or were destined to be handled by respondent, with the object of forcing or requiring other employers to cease handling such messages and to cease doing business with respondent in accordance with established practices for the joint handling of messages between points served by respondent and points not served by respondent.

Eighth Defense

XVIII.

No relief can be granted to effectuate the policies of the Act on the basis of the complaint.

Ninth Defense

XIX.

Any relief based upon the complaint will contravene the policies of the Act.

[Title of Court of Appeals and Cause.]

AFFIDAVIT OF W. P. BOATWRIGHT

State of California,

City and County of San Francisco—ss.

W. P. Boatwright, being first duly sworn, deposes and says:

I am an officer, to wit, the Senior Vice-President of Globe Wireless, Ltd.

The attached two sheets of paper entitled "Globe Wireless Lockout Bulletin Number 3, January 28, 1949," is an excerpt from a bulletin passed out by pickets posted in front of the Globe Wireless, Ltd.'s San Francisco Office on or about January 28, 1949, and there distributed to the public.

I am informed and believe that the American Communications Association, which formerly claimed affiliation with the Congress of Industrial Organization, has been purged from the CIO in pursuance of the CIO policy of eliminating Communist influences from the CIO.

On January 25, 1949, a meeting was held between representatives of Globe Wireless, Ltd. including myself, and a committee of the CIO Labor Council of San Francisco, including the Secretary of the American Communications Association, Mr. Henry Schmidt of the National Longshoremen's & Warehousemen's Union and other CIO officials. This committee claimed to represent the strikers then on strike against Globe Wireless, Ltd. This committee insisted that Globe recognize the American Com-

munications Association as the exclusive representative for bargaining purposes of all employees of Globe in the unit appropriate for collective bargaining purposes including the positions of the strikers. It stated that by counting the number of persons then on strike we could determine the number of persons within that unit who wished the ACA to be so recognized. The committee also requested that Globe agree to a procedure for an election to determine whether or not the ACA should be recognized and asked that such election be held outside of the auspices of the National Labor Relations Board. The terms and conditions under which the strikers would return and the strike be settled were discussed. The committee demanded that Jones be reemployed and that the ACA be recognized as exclusive bargaining agent as the conditions for the return of the strikers to work. Globe's representatives stated that they believed that Jones was discharged for cause and should not be replaced, but agreed to give further consideration to these demands of the strikers.

After the meeting Globe representatives counted the number of persons on strike throughout the collective bargaining unit and determined that a number less than a majority of the employees were on strike and therefore concluded, in view of the statements of the committee, that a majority of the employees in the unit had not designated or selected the American Communications Association as their exclusive representative for collective bargaining purposes.

Globe started to fill the positions of the San Francisco strikers on or before January 22, 1949, and continued thereafter to fill them employing some 12 or more new permanent employees during January, 1949.

Until their positions were filled, Globe Wireless was ready to return to work any one of the persons involved in Case No. 20-CA-193 of the National Labor Relations Board with the exception of Charles A. Jones. Since the strike the following strikers have been reinstated in their positions: Lorraine E. Conger, Lillie I. Friend, Pauline Smith, John Gyurcsik, Jesse E. McLin and George J. Rosengren.

/s/ W. P. BOATWRIGHT.

Subscribed and sworn to before me this 10th day of December, 1950.

[Seal] /s/ EUGENE P. JONES,
Notary Public in and for the City and County of
San Francisco, State of California.

Globe Wireless Lock-Out Bulletin No. 3

Jan. 28, 1949

It is now one week since the Dollar Company, Globe Wireless, unfairly fired Chuck Jones and locked-out all of its other workers who dared protest the injustice.

During this first week of the Globe lock-out all of the basic organizational work required to carry on the fight to get our jobs back has been completed.

Now that we have the lock-out machinery established it is up to each of us to keep it moving by contributing the labor required.

Friday found the Publicity Committee mailing out the second in a series of letters to customers. So far the response of Globe customers has been very gratifying. It seems to us that most customers simply will not use a Company that operates with Scab labor and that refuses to correct the great injustice done to us.

CIO Council Meets With Company

The S. F. CIO Council committee which was especially set up to investigate the lock-out and to assist the Globe workers held a meeting with the Dollar Company on Tuesday. The committee thoroughly explored the discharge and sought a basis for return of all workers to their jobs. The Dollar Company officials were non-committal and stated that they would get in touch with the Secretary of the Council after discussing the situation with the

Board of Directors. Up to this time the Company has not got in touch with the Council.

Watch Out for Company Maneuver

Since the company is listening to the most vicious anti-labor union-busting advice that it is possible to buy we would like to warn each locked-out Globe worker to be especially on guard against company tricks designed to wreck the solidarity of the Globe workers. The usual device to be used at this stage of the game is a back-door back-to-work movement. All we need remember is that we all go back together or none. If any official or unofficial approaches are made that is the only answer we need to give them. Also any such move should be immediately reported to headquarters so that any required precautions can be taken.

* * *

Issued by Publicity Committee
Locked-Out Globe-Wireless Workers
240 Golden Gate Avenue.

[Endorsed]: Filed Dec. 11, 1950.

[Title of District Court and Cause.]

MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE.

Statement

The Board has petitioned for enforcement of an order issued against Respondent following the usual proceedings under Section 10 of the National Labor Relations Act, as amended (61 Stat. 136; 29 U.S.C. Supp. III, Sec. 151 et seq.). The proceedings were initiated by charges filed, not by a labor organization, but by 20 individual employees of Respondent. The order is based on findings that Respondent discharged for cause one of the complainants, Charles Jones; that the remaining 19 complainants, all of whom were members of the American Communications Association, hereinafter called the ACA, struck in protest against the discharge; and that Respondent immediately discharged all of the strikers for having engaged in the strike. On the basis of these findings the Board concluded first, that the Respondent had interfered with, restrained, and coerced the employees so discharged and in the exercise of the right to engage in concerted activities for mutual aid and protection in violation of Section 8 (a) (1) of the Act; and secondly, that Respondent had discouraged membership in a labor organization by discriminating against the discharged employees in regard to hire and tenure of employment in violation of Section

8 (a) (3) of the Act.¹ The order requires Respondent to cease and desist from the unfair labor practices in which Respondent was found to have engaged, to reinstate the 19 employees found to have been unlawfully discharged with back pay from the date of the abandonment of their strike to the date of Respondent's offer to reinstate them. The order does not require Respondent to recognize or bargain with the ACA.

Respondent has now moved the Court for leave to adduce evidence:

1. "to prove that the jobs of the strikers continued available to them up to the time their jobs were filled by new employees"; (Motion p. 5.)
2. "with respect to the availability to the strikers of employment with Respondent subsequent to the time their jobs were filled by new employees"; (Motion p. 5.)
3. to prove that Respondent "was ready to deal with the ACA as soon as it would file the non-Communist affidavits [required by Section 9 (h) of the Act] and be certified with Board"; (Motion p. 7.)
4. "with respect to the intolerable tactics of the ACA contingent among its employees in seeking, by job action and strike activity while re-

¹The Board also found that Respondent had violated Section 8 (a) (1) of the Act by making various coercive and threatening statements to its employees.

- maintaining on the job, to prevent the company from operating its establishment"; (Motion p. 7.)
5. to prove that Respondent "was ready to meet with representatives of the strikers at convenient and reasonable times and places to discuss any and all grievances that these persons might have with respect to their conditions of employment"; (Motion p. 7.)
 6. As to "the general background of the controversy among its employees as to who should represent them and Respondent's attempts to meet these problems without a violation of the law in the face of the continuous refusal of the ACA to file the non-Communist affidavits and its refusal to accept Respondent's invitation to bargain with it if it represented a majority of its employees"; (Motion pp. 7-8.)
 7. "to prove that ACA was demanding that it be recognized as the sole and exclusive representative in the unit appropriate for collective bargaining purposes at the time when ACA was admitting that it was not the choice of a majority of the employees in such bargaining;" (Motion p. 8.)
 8. to refute the Board's findings that "it is necessary to order reinstatement with back pay—in order to effectuate the policies of the Act"; and that "In order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act [it is appropriate

to] order the Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act.” (Motion p. 9.)

All of the foregoing items of evidence are claimed by Respondent to be material to the issues attempted to be raised by Respondent’s Seventh, Eighth and Ninth affirmative defenses which were stricken from Respondent’s answer (See Motion pp. 5, 8.)² In these defenses Respondent pleaded that the charges initiating the proceedings before the Board were made and filed by the ACA which had not complied with the requirements of Section 9 (f) (g) and (h) of the Act (Answer, Par. X and XII); and that ACA had engaged in unfair labor practices within the meaning of Sections 8 (b) (1), 8 (b) (2), and 8 (b) (4) A of the Act (Answer, Par. XV, XVI, and XVII).

In addition to asking leave to adduce the foregoing items of evidence Respondent asks the Court to direct the Board first, “to take evidence as to whether there has ever been an abandonment of the strike and if any evidence be introduced that there has been such abandonment of the strike, to take any evidence Respondent may offer with respect to any offer of reinstatement Respondent may

²Contrary to Respondent’s contention, the first two items of proffered evidence, *supra* p. 2 lie wholly outside the issues which Respondent attempted to raise by its Seventh, Eighth and Ninth defenses.

have made to any of the nineteen strikers" (Motion p. 10); second, "to take any additional evidence that Respondent may discover through the taking of depositions of the chargeable [sic] parties" (Motion pp. 11 and 12); and third, "to make available to counsel for Respondent all statements taken in connection with the investigation of this case" and "to issue subpoenas for the taking of such depositions as are requested by Respondent after consideration of such statements in the hands of the Board" (Motion p. 12.)

The Board respectfully submits that consideration of the motion should be deferred until the argument of the case on the merits and that in any event the motion is totally wanting in merit and should be denied.

GEORGE J. BOTT,
General Counsel.

DAVID P. FINDLING,
Associate General Counsel.

A. NORMAN SOMERS,
Assistant General Counsel.

FREDERICK U. REEL,
ALBERT M. DREYER,
Attorneys, National Labor
Relations Board.

December, 1950.

United States Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Monday, January 8, 1951.

Before: Healy, Bone and Pope, C. C. J.

[Title of Cause.]

ORDER SUBMITTING AND DENYING MOTION TO ADDUCE ADDITIONAL EVIDENCE

Ordered motion of respondent for order granting leave to adduce additional evidence presented by Mr. Richard Ernst, counsel for respondent, and by Mr. Louis Penfield, Regional Attorney, National Labor Relations Board, counsel for petitioner, and submitted to the court for consideration and decision.

Upon consideration thereof, Further Ordered that said motion be, and hereby is denied, without prejudice to renewal of said motion at the hearing of the cause on the merits.

[Title of Court of Appeals and Cause.]

ANSWER TO PETITION

Comes now Globe Wireless, Ltd., Respondent in the above-entitled proceeding, and as its answer to the allegations of the petition for enforcement

filed by the National Labor Relations Board admits, denies and alleges as follows:

I.

Answering paragraph (1) of the petition:

Respondent admits it is a Nevada corporation engaged in business in the State of California, which is within this judicial circuit. It denies that it committed any unfair labor practice in this circuit, or elsewhere, and denies that this Court has jurisdiction of the Board's petition.

II.

Answering paragraph (2) of the petition:

(a) Respondent admits that the Board issued a purported order in the language quoted in paragraph (2) of the Board's petition. It admits that the record certified by the Board as being filed with this Court herein constitutes the entire record of the proceeding before the Board in connection with its Case No. 20-CA-193. It denies that any such proceedings were ever lawfully commenced before the Board or were ever lawfully carried on, and alleges that the Board purported to act with respect to charges made by a labor organization that had failed to comply with Section 9(f), (g) and (h) of the National Labor Relations Act and therefore no complaint lawfully issued, and no procedure ever lawfully began, and that all proceedings with respect to said Case No. 20-CA-193 are without jurisdiction.

(b) Respondent alleges that said purported proceeding was carried on by the Board in an arbitrary and capricious manner in that:

(1) The Board refused to issue subpoenas after proper and timely application therefor was made by Respondent, and that it was entitled to have them issued under Section 11(I) of the Act;

(2) Respondent's application to take depositions for discovery and for evidence in the hearing were denied without reason although the Board was required to order them taken, the application being timely and good cause being shown;

(3) The Board denied Respondent use of any means of discovery in preparation for the hearing, although the General Counsel of the Board was granted and used full and complete means of discovery in preparation for the hearing, such discovery being used with respect to witnesses and evidence useful to Respondent, as well as witnesses and evidence useful to the General Counsel and counsel for the charging parties;

(4) Witnesses were permitted, over the objection of Respondent, to remain in the hearing room and listen to testimony with respect to matters as to which they subsequently testified;

(5) Respondent was denied the opportunity to introduce evidence with respect to defenses incorporated in its answer and numbered therein sixth, seventh, eighth and ninth;

(6) The Board unlawfully enlarged upon the

charge in that it upheld incorporation of an allegation in the complaint (paragraphs III and VI and references thereto in the complaint), took evidence, and made findings and issued part of its order, all with respect to alleged unfair labor practices concerning which no charge was ever filed or a copy thereof served upon Respondent, although the Board is without jurisdiction so to act by virtue of Section 10(b) of the National Labor Relations Act;

(7) The Board made findings of fact with respect to issues not raised in the complaint and on the basis thereof issued an order requiring Respondent to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act;

(8) The Board reversed a finding of the Trial Examiner that the jobs of the strikers were available to them after they had been told they were discharged, although no exception to such finding was filed with the Board;

(9) The Board made other findings contrary to and in addition to the findings of the Trial Examiner, although, respectively, no exception was filed with respect to the Trial Examiner's finding or failure to make the finding;

(10) The Board's order against Respondent is based on findings of fact as to which Respondent was denied the opportunity to introduce evidence by rulings of the Trial Examiner sustained by the Board;

(11) The Board's order against Respondent is based on findings of fact having no evidence to support them, and on other findings that are not supported by substantial evidence on the record considered as a whole and that are contrary to the findings of the Trial Examiner;

(12) The Board's order against Respondent is based on assumptions as to which it admits there is no support in the record;

and for these and other reasons Respondent was denied due process of law in violation of the Fifth Amendment to the Constitution.

(c) Respondent denies that the Board duly reached findings of fact and conclusions and thereupon issued the order quoted in paragraph (2) of the petition; and alleges:

(1) The Board's decision and order states in footnote 15 on page 4:

“As the Respondent did not attempt to settle the strike or solicit the return of the strikers, we find no basis for concluding, as did the Trial Examiner, that ‘any or all of them could have had their jobs back at any time before they were filled by new employees.’ ”

although there is no evidence in the record to support the Board's statement preceding the first comma in the above quotation, which is the Board's sole basis for reversing the Trial Examiner's finding quoted; although the Board's finding is con-

trary to the evidence; and although there was no exception to support such reversal of the Trial Examiner's finding quoted.

(2) The Board's statements on page 3 of its decision and order:

that Respondent sought to eliminate the ACA and rid itself of that union; that it warned employees that it intended to discriminate against ACA members, to oust the ACA, to discharge its adherents, and otherwise to interfere with, restrain or coerce employees who chose to adhere to the ACA and participate in its activities;

are based on expressions of views, argument or opinion containing no threat of reprisal or force or promise of benefit, and there is no basis for modifying the Trial Examiner's finding that the expressions were of such character.

(3) The Board's statements referred to in clauses (1) and (2) hereof, and the statements and implications:

that prior to filing the petition in this Court there was a complete severance of relations between Respondent and the 19 strikers so that they were severed with the same finality with which Jones was severed;

that the strike of the 19 employees was "a complete work stoppage" and that the 19 strikers were "discharged because they chose to strike";

the reinstatement with back pay was necessary "in order to effectuate the policies of the Act"; that the alleged unfair labor practices were "potentially related to other unfair labor practices proscribed and that danger of their commission in the future is to be anticipated from the Respondent's conduct in the past" and that "in order to make effective the interdependent guarantees of Section 7 and thus effectuate the policies of the Act," the order should direct Respondent "to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act"

are contrary to the fact; are not supported by substantial evidence on the record considered as a whole; and are based on a record in which Respondent was, by rulings of the Trial Examiner sustained by the Board, prevented from submitting material and relevant evidence as to these statements.

(4) The Board's order is based on assumptions, as to which it admits on the face of its decision and order that there is no evidence, that the strike of the 19 strikers has been abandoned and that no offer of their former or substantially equivalent positions was made to any of the 19 prior to his abandonment of the strike. Respondent has received no information justifying its concluding that the strike has been abandoned and it has offered each of the 19 strikers reinstatement in his former or substantially equivalent position, and such offer

has been rejected by each of the 19 strikers who has not been put back to work.

III.

The Board's decision and order is arbitrary, capricious and contrary to law in that the conclusions are without the support required by law:

(a) The conclusion that Respondent discriminated in regard to hire or tenure of employment to encourage membership in a labor organization and interfered with, restrained or coerced employees in the exercise of rights guaranteed in Section 7 of the Act by telling some of them they were discharged, is contrary to law in that each and every one of the 19 strikers could have had his job back at any time before it was filled by a new employee and thereafter had he given up his insistence that Jones be reemployed as a condition of his returning to work, and each knowing this refused to return to work.

(b) The Board's conclusion that Respondent had discriminated in regard to hire or tenure of employment to encourage or discourage membership in a labor organization and had interfered with, restrained or coerced employees in the exercise of rights guaranteed in Section 7 is based on findings contrary to those of the Trial Examiner and that were reached without exception to the contrary finding of the Trial Examiner; that have no evidence in the record to support them; that are contrary to the evidence; that are not supported

by substantial evidence on the record considered as a whole; and that are based on a record in which Respondent was, by rulings of the Trial Examiner, sustained by the Board, prevented from submitting material and relevant evidence. And, furthermore, it is based upon assumptions as to which it appears on the face of the decision and order that there is no evidence.

(c) The conclusion that statements of Bash amounted to violations of Section 8(a) (1) depends on findings that are without evidence to support them; that are not supported by substantial evidence on the record considered as a whole; that are based on a record in which Respondent was, by rulings of the Trial Examiner sustained by the Board, prevented from submitting material and relevant evidence; and that are based entirely on expressions of views, argument or opinion containing no threat of reprisal or force or promise of benefit and found to be of such character by the Trial Examiner.

(d) The conclusion that Respondent be ordered to reinstate the 19 strikers with back pay in order to "effectuate the policies of the Act" is based on a record in which the Board refused to hear evidence as to what affirmative relief would effectuate the policies of the Act; is based on findings contrary to those of the Trial Examiner, although no exception to the Trial Examiner's findings in this respect was filed with the Board; is based on find-

ings that are contrary to the facts and that are not supported by substantial evidence on the record considered as a whole. Said conclusion is contrary to law for the further reasons:

(1) Respondent could have lawfully discharged and refused to reemploy the strikers because their refusals to work were each in violation of non-discriminatory Company rules, the contract of employment, and law.

(2) Respondent could have lawfully discharged and refused to reemploy the strikers because their strike had an unlawful purpose, was in support of unlawful demands, and was carried on in an unlawful manner.

(3) An affirmative order of reinstatement, with or without back pay, would not effectuate the purposes of the Act because it would encourage workers to set up informal labor organizations to engage in wildcat strikes and to disregard established practices for the friendly and peaceful adjustment of industrial disputes and would encourage labor organizations to violate Section 8(b) of the Act.

(e) The conclusion that Respondent be ordered to cease and desist from in any manner infringing upon the rights of employees guaranteed by the Act is based on findings with respect to issues not raised in the complaint or otherwise prior to the issuance of the Board's order; is based on findings contrary to those of the Trial Examiner, although no exception to the Trial Examiner's findings in

this respect was filed with the Board; is based on expressions of views, argument or opinion containing no threat of reprisal or force or promise of benefit; is based on findings that are contrary to the facts, that are not supported by substantial evidence on the record considered as a whole and that are based on a record in which Respondent was, by rulings of the Trial Examiner sustained by the Board, prevented from submitting material and relevant evidence.

IV.

Because of rulings of the Board and the Trial Examiner referred to hereinabove and the procedure adopted in the case, Respondent was prevented from introducing evidence material to the findings, conclusions of law and the order of the Board. Respondent has filed its motion for leave to adduce additional evidence which this Court has denied with leave to renew at this time. Respondent hereby renews said motion and in support thereof alleges that it is prepared to prove, among other things, the follows:

(a) That the statements of Respondent's agents that the 19 strikers were discharged were not unequivocal severances of employment relations between Respondent and the strikers, but were accompanied by invitations to come back to work and give up the demand that Jones be reemployed, which invitations were well-known to the strikers and so placed them in a relation equivalent to that between a striker and the employer. This was dem-

onstrated (1) by negotiations in the January 25, 1949, meeting held between Respondent and collective bargaining representatives of the strikers in which the matter of the return to work of the strikers was thoroughly discussed and in the course of which the strikers advised Respondent that they would not return to work unless Respondent agreed to recognize the ACA as exclusive collective bargaining representative of all of its employees and reinstated Jones, (2) by the admission of the strikers in their picket line bulletins, a copy of one of which being attached to the motion, dated December 10, 1950, and (3) by rehiring of strikers and specific offers of their former or substantially equivalent positions to the strikers after some indication was given that they might be accepted, such offers of reinstatement being made prior to the time the strikers were willing to take their former or substantially equivalent positions without additional "economic strike" concessions.

(b) If the Board can raise the issue of reinstatement and back pay at this late date and without waiving Respondent's position that the Board cannot lawfully issue such an order, that reinstatement with back pay would not effectuate the purposes of the Act and would be contrary to law on the following grounds, among others:

(1) The strikers demanded, as a condition to their returning to work, that Respondent recognize the ACA as exclusive representative for bargaining purposes of all of its employ-

ees in an appropriate unit although they then admitted that the ACA was not the choice of the majority of the employees in such unit;

(2) The strikers engaged in unlawful activities during the strike by participating in, and making their own, acts in violation of Section 8(b) of the National Labor Relations Act and by violating other statutory law.

(3) The activity of the strikers was not protected concerted activity because they had entered into an agreement with Respondent not to engage in such action and they did thereafter plan and carry out a quickie strike in violation of this commitment;

(4) The charges are filed by a labor organization, to wit, the ACA and/or the informal organization constituted by the concerted activities carried on by the strikers, such labor organization being not in compliance with subsections (f), (g) and (h) of Section 9 of the Act when the charges were filed and the complaint purportedly issued.

(c) If the Board can raise the issue of reinstatement and back pay at this late date and without waiving Respondent's position that the Board cannot lawfully issue such an order, that Respondent was acting in good faith and in the belief that it was complying with the National Labor Relations Act throughout the period involved in the proceeding, and was complying with that Act unless only

the law be that the Respondent was required to deal with a non-complying union and refrain from asking it to comply and prove that it was the choice of the majority under the circumstances although it was concurrently promising to bargain with it as soon as there was compliance and a certification; and that all of Respondent's actions taken in view of the problems created by the conflicting demands of labor unions and the refusal of the ACA to comply with the National Labor Relations Act were reasonable, fair and respectful of law under all of the circumstances.

(d) Further evidence to support the conclusion of the Trial Examiner, reversed by the Board, that the statements of Bash, referred to in Part 1 of the Board's decision and order, were all expressions of views, argument or opinion containing no threat of reprisal or force or promise of benefit.

Wherefore, Respondent prays that the Court set aside the Board's order and dismiss its petition for enforcement.

/s/ GREGORY A. HARRISON,

/s/ RICHARD ERNST,

BROBECK, PHLEGER &
HARRISON,

Attorneys for Respondent.

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